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DEMOCRACY AND EFFICIENT GOVERNMENT—LESSONS OF THE WAR

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Under the happiest of conditions it is scarcely to be expected that democracy should result in a high degree of efficient government. For the very object of democracy is to give expression to desires and impulses which can only with difficulty be brought into harmony. Whether taken in the sense of the direct government of the people or in the sense of government by representatives of the people, democracy involves the reconciliation of conflicting views, resulting after much discussion and delay in the adoption of a compromise more or less unsatisfactory to both sides. In the formulation of its policies democracy is thus reduced to what is feasible and expedient in view of the present state of public opinion, while in the administration of its laws it must depend upon the executive ability not of its ablest citizens but of those who have succeeded in winning the confidence of their constituents. Moreover, in spite of obvious duplication of functions it is important that government be kept decentralized in order that the individuality of local areas may be preserved where national unity is not essential.

On the other hand efficiency is concerned with the attainment of the objects of government by the best and most direct means

and with the least possible cost. It seeks to put into effect the wisest and most advantageous policy irrespective of the prior approval of the people. In the administration of the law it is concerned with securing ability regardless of public confidence in the particular official; and it has no fear of the concentration of power necessary to secure unity and directness of national action.

In the normal times of peace those who believe in democracy as a principle of government have no hesitation in sacrificing some degree of efficiency to secure their ideal. There are definite moral advantages attached to self-government which make efficient government a distinctly secondary object. Law and order must, indeed, be maintained in the state, and certain conditions of public health and convenience secured; but whether these ends shall be attained in the largest measure and with the least possible expenditure of effort and money is less important than the fact that the means taken approve themselves to the citizen body by whom the agencies of government are set up and maintained. The educational value of the public discussion of measures, the training in self-restraint which comes from the necessity of adjusting conflicting views, the sense of the responsibilities of citizenship, are extrinsic benefits which are regarded as more than counterbalancing the ordinary degree of mismanagement and extravagance which accompany popular government. Under normal conditions, therefore, the problem of the statesman is to obtain as good government as is compatible with self-government.

But in time of war it is clear that a wholly different principle must prevail. The problem is then one of coördinating all the forces of the nation for the single object of providing a more effective fighting machine. The advantages of self-government must then be subordinated to the preservation of the national existence; the delays incident to discussion and debate must be overcome, and a unity of administration must be obtained even at the price of a temporary executive autocracy. For the sake of self-preservation it may be necessary for the state to suspend temporarily those very principles of individual liberty which the war is fought to maintain for the nation as a whole.

The purpose of the present paper is to point out the important changes which were made in the political institutions of the United States and Great Britain in order to adapt them to the needs of a national fighting machine, and to examine the special difficulties which were confronted by the United States at its entrance into the war by reason of its more rigid form of constitutional government. In the demands which it made upon democratic governments the war operated as a supreme test which revealed flaws in the machinery not otherwise noticeable. Many of these flaws will be found to be inseparable from democracy as a working form of government; others, however, will be found to be defects in the organization of the government which may be remedied without loss of its democratic character.

Modern war is of such a character as to give a distinct initial advantage to an autocratic government. For wars have ceased to be any longer a contest merely between the armed forces of the belligerents. The distinction long made by international law between combatants and non-combatants, while it still holds good in theory, has for all practical purposes been regarded as obsolete. The recent war has made it clear that armies are powerless in the field unless backed by the entire industrial organization of the country. The manufacture of arms and ammunition, the building of ships, the production of increased supplies of food, and the distribution of the raw materials of industry according to need, are all essential elements in the larger plan of campaign by which the deadlock of the battle lines is to be broken. Under such circumstances it is clear that preparedness for war consists, not merely in the maintenance of a trained army, but in the control over and the coördination of the national resources so as to permit of their immediate adjustment to the needs of the fighting forces.

In this respect the state socialism of Germany gave her a marked advantage over her more democratic opponents. The control exercised by the government over the raw materials of industry, over transportation, and in some degree over credit, greatly facilitated the task of transforming a nation at peace into a nation at war. It put at the disposal of the government

the organization and the clerical machinery which made it possible to mobilize the industrial resources of the country without the delay and confusion experienced in countries whose industries had never been subjected to direct state control. Moreover, once the war had broken out, the advantage of autocracy consisted in the absence of parliamentary responsibility and in the prompt and ready obedience of a people accustomed to discipline and command. The freedom of the executive in Germany from control by the Reichstag made it possible to carry through plans without the distraction incident to questions and interpellations, and without the disorganization resulting from the creation of coalition cabinets and war committees. Martial law could be put into effect without raising the issue of the violation of fundamental personal rights guaranteed by the constitution. Restrictions could be placed upon freedom of speech and of the press and a system of rationing food and other necessaries of life could be adopted with the assurance of coöperation on the part of the people to whom governmental regimentation was a familiar policy. It may well be questioned whether the initial advantages in point of organization possessed by the German government were not more than offset by diplomatic blunders which a government in closer touch with public opinion might have been kept from committing, and also whether the advantages of disciplined obedience on the part of the people were not counterbalanced by the lesser degree of resourcefulness and endurance resulting from the paternalistic policies of the government. But it would seem that, at least in respect to the prompt and effective mobilization of men and of material resources, the more autocratic government of Germany had a distinct advantage over its opponents.

The difficulties confronting Great Britain and the United States upon their entrance into the war were due in part to the character of their governmental organization and in part to the individualistic traditions of their peoples. Both countries were obliged to enlarge greatly the executive powers of the government, to assume an unaccustomed control over the industrial life of the country, to create an enormous administrative staff, and to

impose restrictions upon the free activities of the citizen body. In addition both countries were faced with the problem of creating and equipping new armies for which no provision had been made in advance. As between Great Britain and the United States, the advantage lay with the former in respect to the facility with which its form of government could divest itself of its democratic character and create the unity of control essential to efficiency. The United States found itself with a government whose powers were divided between the national government and the forty-eight governments of the separate states, while in the national government itself a form of organization prevailed which divided responsibility between the legislative and executive branches of the government. On the other hand the United States had the advantage of observing, while a neutral, the experience of Great Britain in meeting the emergencies created by the war, and was thus enabled to act with far greater promptness and efficiency when its own turn came to mobilize its men and resources for the conflict.

The chief political problem before the British government during the course of the war was to secure the fullest measure of unity of control in the formulation of policies and in their effective execution, and at the same time to maintain the confidence of Parliament and indirectly of the people. The advantage of the British system of cabinet government as against the checks and balances of the American system was manifest from the outset. So long as the confidence of Parliament could be maintained the cabinet was able to run the government with a free hand, restricted neither by the jealousy of Parliament nor by the constitutional limitations peculiar to the United States. The control of Parliament remained in abeyance, but nevertheless ready to be exercised should a general feeling arise that the cabinet was deficient in its task. At the same time the authority of the cabinet at London extended to all parts of the kingdom alike, and no question could be raised as to the possible encroachment of its decrees upon the powers of local self-government in the different sections of the country. No constitutional difficulties were encountered in the way of the assumption of unlimited powers on the part of the government.

The outbreak of the war found the Liberal party, supported by the Irish Nationalist and Labor parties, in possession of a majority in Parliament. A truce was entered into with the Unionists, which resulted in the suspension of parliamentary interpellation and enabled the government to put through a number of emergency acts without delay. In June, 1915, a coalition cabinet was formed under threat from the Unionist party that it could no longer refrain from criticising the war program of the government unless it were represented in the cabinet. In turn, dissatisfaction was expressed with the coalition cabinet, and the demand was raised for the creation of a smaller body which could be released from responsibility for the conduct of the departments and devote its entire attention to the problems of the war. A war committee of six members was then formed within the coalition cabinet, and with the assistance of a military, naval and diplomatic staff it undertook a general direction of war measures, subject to a limited control on the part of the cabinet as a whole. Thus organized the coalition cabinet succeeded in maintaining the confidence of Parliament during the critical period accompanying the introduction of conscription. Criticism of the inefficiency of the war committee led, however, to a further reorganization of the government, and in the presence of a proposal that a council of war be formed, from which the prime minister was to be excluded, Mr. Asquith resigned and a new "War Cabinet" under the leadership of Mr. Lloyd George succeeded to the control of the government.

The war cabinet was a constitutional innovation of a striking character. It was not the result of a parliamentary vote, but of an agreement among the leaders of the different parties. Unlike the war committee it became directly responsible to Parliament, but it did not undertake the task of party leadership in the house of commons and its members attended the sessions of Parliament only on special occasions. Its relations with the larger body of ministers were somewhat uncertain. It ceased to exercise any active direction of the administration, and merely undertook to supervise in a general way the functions of the departments and to adjust conflicts of authority among the

old and new ministerial offices. In consequence of the complete elimination of the old Liberal leaders in the choice of the war cabinet and of the important ministerial posts, a Liberal opposition was formed in the house of commons; and Mr. Asquith, still holding the support of many of his former followers, several times came to the rescue of the group which had ousted him from the government.

Public opinion, as manifested in the press, welcomed the new cabinet as giving promise of a more energetic and efficient prosecution of the war, and looked upon the departure from constitutional precedent as fully justified by the needs of the situation. "It is better," said a writer in the *Fortnightly Review*, "that the war should destroy the traditional disorganization of democracy than that the traditional disorganization of democratic government should destroy democracy itself and the British race." On the other hand protests were heard from the Liberal press, not only to the effect that the "new kind of government" created an autocracy without improving the organization of the administrative departments in any respect, but also that it was dangerous that vital decisions, which would end the war or prolong it indefinitely, should be taken by four or five men alone, and that the ministers nominally responsible to Parliament for foreign policy, the army, and the navy, should have only a consultative voice in their decisions.

The creation of the war cabinet and the manner in which it undertook to exercise its authority resulted in the practical suspension of parliamentary government. Not only did the leading ministers discontinue attendance in Parliament, but a number of the other ministers had no seats in Parliament; so that information as to the policies of the government had to be obtained from undersecretaries, while Mr. Bonar Law, the former Unionist leader, now a member of the war cabinet, acted as a sort of "sentry, set on guard to protect the inner cabal from parliamentary snipers," ready to give the alarm should his defense of the government fail to allay distrust. Thus the unity of the executive and legislative departments, characteristic of the cabinet form of government, was actually replaced by an auto-

cratic executive, leaving Parliament with scarcely a semblance of its constitutional function of direction and control, and with no legislative functions other than the occasional passage of laws called for by the cabinet. The acquiescence of Parliament in so complete a reduction of its authority could only have been the result of its clear realization that it was better to give even a less efficient government a free hand than to risk the delays incident to change.

By contrast with the more practical attitude of the British Parliament, the French chamber of deputies insisted upon exercising its legislative functions. Its great committees dealing with the army and with foreign affairs held practically continuous sessions, to permit which the rules of parliamentary procedure were suspended; and while abstaining from interference in military affairs the committees undertook to give orders to the executive department and to exercise a direct control over the administrative services of the government, in order to insure that the supplies for the army should be equal to the emergency. At the same time the chamber continued to hold the cabinet directly to account for its policies; and cabinets headed by Viviani, Briand, Ribot, and Painlevé, rose and fell in succession, until the advent of Clémenceau, in November, 1917, gave stability to the government. In spite of the emergency the French chamber departed little from its constitutional methods during the war, insisting both upon dictating policies to the executive and upon criticising the government for its failures.

In addition to the problem of reorganizing its government so as to secure a more efficient administration and a greater unity of control, Great Britain was obliged to enlarge greatly the constitutional powers of the government. On the one hand it was necessary to bring the entire industrial activities of the country to the support of the military forces and on the other hand restrictions had to be placed upon the normal freedom of the individual citizen in order to prevent interference with the conduct of the war. Both of these objects were accomplished by the passage of the Defense of the Realm Act, together with its successive amendments. The assumption of control by the

government over the industrial resources of the country was gradual and tentative, progressing by degrees from control over the essentials of military provisionment to the complete mobilization of all resources, including the production and consumption of food supplies. The railroads were promptly brought under direct control of the government, and their administration was placed in the hands of a committee of railway managers with the president of the board of trade as chairman. Control over the coal mines was not at first deemed necessary, but the refusal of the miners' federation to accede to the regulations laid down for labor in other industries, and the threat of an impending strike, ultimately forced the government to take over the mines, and a new department was created to administer them. The prices of iron, steel, and copper were fixed, and priority regulations were drawn up in order to secure to the various industries their essential supplies in the order of their importance for the prosecution of the war. Serious labor difficulties were experienced from time to time in connection with the railways, and the government was finally obliged to apply the law declaring strikes illegal until resort had first been had to the arbitration of the minister of labor. Compulsory arbitration of disputes was prescribed in the case of the munition factories, and a drastic system of "leaving certificates," which later had to be abandoned, was adopted in the effort to check the flow of labor from one factory to another. On the whole the record of British war administration was marked by a gradual and tentative assumption of control over the national life, resulting in delays which on more than one occasion were little short of fatal.

If British democracy was somewhat slow to realize the necessity of assuming control over the industrial life of the country and slower still to organize its government upon an efficient basis, it early recognized the necessity of placing restrictions upon the freedom of its citizen body in order to prevent the giving of aid to the enemy. The Defense of the Realm Act and its amendments struck down at one blow the traditional rights of British citizenship and instituted a régime of military law which was nothing short of a revolution in British consti-

tutional procedure. The Crown in Council was empowered to authorize the trial by court martial, and in the case of minor offenses by courts of summary jurisdiction, of persons violating the regulations prescribed. These regulations were of a most sweeping character, and were designed to prevent persons from communicating with the enemy, from spreading false reports or reports likely to cause disaffection to the government, and otherwise from giving assistance to the enemy or endangering the successful prosecution of the war. Searches and seizures were authorized without warrant and on the mere ground that there was "reason to suspect" that the premises were being used in a way prejudicial to the safety of the realm. Freedom of speech and of the press were both restricted to the point where it was legally possible to impose penal servitude upon the speaker or journalist who speculated upon the plan of campaign or criticised the accommodations of the army camps. Drastic as these regulations were, the British public submitted with little resistance, realizing that the presence of enemy aliens made it necessary to confer arbitrary powers upon the government, and apparently confident that as soon as the emergency was over their traditional rights would be restored to them.

The difficulties experienced by British democracy in adapting itself to the demands of the war have resulted in a number of plans of reconstruction bearing both upon the organization of the government and upon its functions. The most important of these plans perhaps have been those presented by the machinery of government committee of the ministry of reconstruction. The report of the committee first attempted to define more precisely the relations of the cabinet to Parliament. It described the essential functions of the cabinet as consisting in the determination of the policies to be presented to Parliament, the supreme control of the national executive in accordance with the policy prescribed by Parliament, and the continuous coördination and delimitation of the activities of the several departments of state. The tentative suggestion was made that the solidarity of the cabinet should be broken up by making the individual members responsible to Parliament and removable

by a vote of want of confidence. It further advocated that the cabinet be reduced to a smaller body of ten or twelve members in place of the twenty or more members of 1914. At the same time the number of ministerial departments should be reduced in accordance with a scheme to distribute the business of government into ten main divisions, with occasional subdivisions. In this respect the recommendations of the report form an interesting subject of comparison with the present organization of the national government of the United States and with the schemes of administrative reorganization recently adopted by some of the separate state governments. No general plan of administrative reorganization has, however, been as yet actively undertaken in Great Britain. Two new ministries, of health and transport, have been established; and substantially the pre-war cabinet has been revived.

The difficulties confronting the government of the United States at its entrance into the war parallel in almost every case those experienced by the British government. The outstanding difference between the political situation in the two countries was due to the omnipotence of Parliament on the one hand and the strict limitations of a written constitution on the other. Parliament was the maker of the British constitution as well as its instrument of government; and in consequence Parliament could reorganize and enlarge the executive department and could assume whatever powers were necessary to meet the emergency without question as to the constitutionality of its acts; at the same time the unity between the executive and legislative departments prevented friction between Parliament as a legislative body and the cabinet and ministry as its executive committee. In the United States, however, there was the question as to the extent of the war powers of Congress and of the President, there was the division of power between the central government and the member states, and there was the formal separation of the legislative and executive departments of the government.

The first and second of these constitutional difficulties were overcome without marked loss of efficiency, but the lack of unity in the executive and legislative departments proved from

beginning to end a serious handicap in the effective prosecution of the war. The dissatisfaction of many of the leaders in Congress with the personnel of the executive department and with its methods resulted in numerous investigations of boards and bureaus, and in a long-drawn-out contest between the President and Congress as to the means of putting into effect the much-needed reorganization of the administrative departments.

The lack of unity was, of course, not wholly due to the system of checks and balances provided for in the Constitution. Legally speaking there was nothing to prevent the closest coöperation between Congress and the President. But as a practical matter the absence of any control by Congress over the President naturally led it to view with suspicion the exercise by him of those comprehensive powers which it had itself conferred upon him. Congress could make appropriations, but it could not control the methods of spending the huge sums of money which it so freely granted. Congress could bring the industries of the country under the direction of the government, but it could not control the agencies set up by the President for the effective execution of the powers granted him. In consequence the criticism in Congress of the conduct of the administration was for the most part destructive rather than constructive, and had the effect rather of discouraging the country with the lack of progress made than of stimulating the executive department to greater efficiency in the prosecution of the war. But making due allowance for the lack of coöperation between the President and Congress due to personal reasons, it remains true that the constitutional separation of the legislative and executive departments resulted in constant friction, in needless delay in the passage of the necessary legislation, and in duplication of activities and extravagance of expenditure which under more critical circumstances might have proved disastrous to the country.

It is a significant feature of a constitution which in other respects narrowly hedges in the departments of the government that in respect to the conduct of war it confers comprehensive and unrestricted powers upon the President and upon Congress within their respective spheres. The President is made "com-

mander-in-chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States." He is thus put in supreme control of the military conduct of the war, and complete unity of military command is secured. The powers of the President as commander-in-chief are, however, limited to the direction of the army and navy, and no new political powers may be assumed by him on the basis of that authority. He may plan campaigns, dispose of the military and naval forces, direct operations, and execute the provisions of military law; but outside that sphere he may not constitutionally act without express warrant of Congress.

Exceptions from this rule occurred during the Civil War when President Lincoln, in the effort to suppress opposition to the policies of the government, authorized searches and seizures without warrant, and in spite of the protest of the Supreme Court suspended the writ of habeas corpus. During the recent war President Wilson kept more strictly within his constitutional powers, but he did not hesitate to use the influence of his office as well as his power over foreign affairs to further the cause of the country. His successive statements of the ideal objects for which the United States had undertaken to fight undoubtedly aroused an enthusiastic zeal in the minds of thousands who would have responded but lukewarmly to an appeal based upon the technical grounds of war. At the same time the declaration of the President that the victory of the allied cause would insure the liberation of oppressed nationalities and the recognition of the principle of self-determination helped to weaken the allegiance of large numbers within the ranks of the enemy armies. But apart from those powers inherent in his office, the President remained during the war, as before, merely the executive officer of the government, unable to act upon his own initiative and obliged to bide the time of Congress before he could take the measures necessary to back up the army and navy with the required supplies of war. It is important, therefore, to distinguish sharply between what the President could do independently as commander-in-chief and what he could do only after Congress had specifically authorized him to act.

On its part Congress was for all practical purposes a legislature of unlimited powers. By the Constitution Congress is given the power "to raise and support armies." The grant of power is comprehensive and unqualified, and it endows Congress with authority to take all steps necessary to the successful prosecution of war. What if the measures taken by Congress come into conflict with the normal operation of the provisions of the Constitution? In such cases the war powers of Congress must be regarded as paramount. The reserved rights of the separate states and the guarantees contained in the first eight amendments must be restricted to the extent necessary to permit the free exercise of the war powers.

In the recent war, demands had to be made upon the entire industrial resources of the country to furnish the materials needed to support the armies raised by the Selective Service Act; and Congress was forced to bring under the control of the government a hundred forms of business life which in normal times would have been completely beyond its control. In no instance was the constitutionality of the assumption by Congress of these new powers successfully contested. The validity of the Selective Service Act was questioned as being in excess of the powers of Congress and in violation of other clauses of the Constitution; but the court found no difficulty in disposing of the objections raised. Comprehensive and far-reaching as were the functions undertaken by the war industries board in determining priorities in respect to the production, delivery and use of materials and supplies, as well as in fixing prices and regulating methods of production, no question was raised as to the authority of the council of national defense under whose direction it acted. The Shipping Board Act of 1916 and its subsequent amendments brought the entire shipbuilding resources of the country, as well as ships already registered, under the direct control of the government. The production and distribution of food products and fuels was regulated and prices were fixed where necessary. The operation of the railways, telegraphs, and telephones was taken over by the government in accordance with a contract for their use, the terms of which were fixed by the government. If the

government refrained from extending its control over the labor engaged in essential industries and preferred to have recourse to voluntary agencies for the settlement of industrial disputes, it was not from lack of constitutional power to act in the case of the laborer as in the case of the employer and his factory. Labor, indeed, successfully resisted the establishment of compulsory arbitration tribunals. But while expediency dictated acquiescence in its attitude of opposition to any form of industrial conscription, it would have been clearly within the power of Congress to have applied compulsion to workers in essential war industries as well as to the men in the army for whom the munitions were being made.

Constitutional objections were raised in a number of cases to the various laws passed by Congress to prevent interference with the conduct of the war. In these instances the government was not calling upon the positive aid of the citizen in the prosecution of the war, but was imposing restrictions upon the liberty of the individual and thus coming into conflict with the bill of rights of the Constitution. The Espionage Act in its original form undertook to penalize the offense of making false statements with intent to interfere with the prosecution of the war and particularly the offense of obstructing the operation of the draft act. The amendment to the Espionage Act, known as the Sedition Act, was directed against interference with the sale of liberty bonds and against the use of language abusing the form of government of the United States, the national flag, or the uniform of the army or navy. In both instances the freedom of speech guaranteed by the Constitution was held to be not absolute, but conditional, that is, subject to such restraints as are necessary to protect the community against the menace of sedition or the defeat of its purposes in the war. Greater difficulty was experienced by the court in upholding the application of the Sedition Act, owing to the more remote connection between language abusive of the form of government of the United States and the protection of the vital interests of the nation in the war; and a strong dissenting opinion was rendered by Justice Holmes in a case involving such language when uttered under conditions

which did not appear to him to indicate the intention of giving aid to the enemy.

Sharp discussion in Congress and in the press took place over the issue of a censorship of the press, and in the face of strong opposition the provision asked for by the President was eliminated from the Espionage Act. A modified form of censorship was established, which consisted in the voluntary submission of the press to the decision of the committee on public information with regard to the expediency of publishing news items relating to the progress of the armies in the field. It would seem clear, however, that if Congress had acquiesced in the view of the executive department and created a compulsory censorship similar to that set up in Great Britain by the Defense of the Realm Act, the courts would have upheld its constitutionality. The distinction is commonly made between a law penalizing statements made in contravention of regulations prescribed and a law requiring the approval of a board of censors before matter may be published. Even the latter more drastic form of censorship would appear to be justified if urgently necessary to prevent by anticipation the publication of injurious matter. Doubtless it was inexpedient to establish such a censorship under the circumstances with which the United States was faced. That it would have been constitutional if regarded by Congress as essential to the protection of the country may be confidently asserted.

It was in relation to the organization of the administrative departments that the system of the separation of the powers of government manifested its greatest weakness and compelled attention to the need of readjusting the relations of Congress and the executive. Congress, as we have seen, put at the disposal of the President practically the entire resources of the country; but being unable to control the President or the heads of the executive departments directly, Congress could but look on with impatience at what it considered in many cases to be an inefficient and dilatory execution of the laws it had enacted. The personal aloofness of the President and of some of his cabinet doubtless contributed to the lack of confidence of many in Con-

gress; but apart from these accidental reasons there was the inevitable tendency to criticise publicly and sharply simply because there was no other way of forcing a change in the methods pursued by the executive department.

In consequence of the lack of confidence of Congress in the efficiency of the conduct of the administration, proposals were made that a new department or ministry of munitions should be created, which should be given complete control over supplies of every kind for the army and navy; but the opposition of the President led to the abandonment of the plan. A more thoroughgoing reorganization, or rather reconstruction, of the executive department was urged by the chairman of the committee on military affairs in the senate, in the form of a war cabinet, to be composed of three persons who should have the power to coördinate and control the functions of all the executive departments and agencies. The war cabinet would thus have been a small directorate exercising practically unlimited powers of control and leaving to the President only the power to review their decisions. The opposition of the President to such a body was a foregone conclusion, while the constitutionality of the proposed body was at least open to question. As an alternative measure the President requested Senator Overman to introduce a bill which would permit the coördination and consolidation of the executive bureaus and agencies "in the interest of economy and the more efficient administration of the government." The bill was finally passed on May 4, 1918, and empowered the President to redistribute the functions of the executive agencies and to make transfers both of functions and of personnel from one department to another; but by reason of the long delay in the passage of the bill the President had already resorted to informal methods of coördinating the various bureaus, and no sweeping changes were made as a result of his new powers.

Looking at the long controversy between the President and Congress it can not be doubted that the system of checks and balances provided for in the Constitution proved a very real source of trouble and was the cause of delays and inefficiency which a unified system of government, under a cabinet responsible

to the legislature, might readily have prevented. Cabinet government in Great Britain made mistakes of its own; but at least in point of organization for effective action it had the advantage over the separation of powers by which the Constitution of the United States originally sought to safeguard democratic government.

The internal organization of Congress was responsible for further friction in the operation of the governmental machinery, but less difficulty was found in this case in providing a remedy. Apart from the constitutional obstacle presented by a bicameral legislature, with possibilities of delay resulting from the necessity of reconciling conflicting views of the two houses, the committee system under which Congress is organized for legislation exhibited several features which were at once undemocratic and inefficient. It so happened that the rule of seniority, by which the chairmen of committees are chosen on the ground of length of service in Congress, in several instances placed at the head of the important committees men who were out of sympathy with the policies of the executive. For example, the chairman of the house committee on military affairs was so far opposed to the plan of raising an army by conscription that it became necessary to call upon the ranking Republican member of the committee, a German by birth, to take charge of the bill. The chairman of the foreign relations committee of the senate, as well as the chairman of the house committee on ways and means were both strongly opposed to the declaration of war. Under such conditions it could scarcely be expected that prompt action would be taken by the committees in presenting the measures called for by the President and approved even by a majority of Congress itself.

A word must be said with respect to the relations between the national government and the governments of the several states. Here, in spite of the constitutional lack of unity, a remarkable degree of coöperation was obtained. In the first place the state governments were called upon to acquiesce in the encroachments upon their authority involved in the assumption by Congress of so large a control over the industrial life of the country. The railway administration, for example, automatically cancelled a

large part of the authority of the state railway and public service commissions. The establishment of cantonments in different parts of the country resulted in the creation of important communities beyond the control of the state governments. The Food and Fuel Control Act and the subsequent War-time Prohibition Act made deep inroads into the normal police power of the states.

In the second place the exceptional demands created by the war led the states as well as the national government to enter new fields of legislation in the endeavor to provide for special local needs which could not be met by general laws. State councils of national defense were organized to coöperate with the national council in the work of mobilizing the resources of the state and maintaining law and order under the trying conditions created by the war. Special laws were passed to assist the families of men in service, to regulate the use of food and fuel, to remedy the shortage of labor, and to check the activities of alien enemies and their sympathisers.

In the third place the necessity of securing coöperation between the administrative departments of the state and national governments led to the establishment of new and more intimate relations between them, both in the form of conferences between the state governors and the secretary of war, and in the form of local conferences between the governors of neighboring states having special problems of their own. On the whole the relations between the national government and the states during the war showed that the large powers of local self-government possessed by the states, although resulting in considerable duplication of effort and consequent lack of efficiency, were not a barrier to coöperation in all the more important problems before the country, while at the same time they had the effect of reconciling the population of the states to restrictions which might have created resentment if they had emanated from the central government alone.

The outstanding lessons of the war in respect to the organization and functions of the government bear chiefly upon the problem of readjusting the division of powers between the

national government and the states and upon the problem of reorganizing the system of checks and balances within the national government itself. Many of the powers which Congress was enabled to assume as implied in the power to raise and support armies were found to be powers equally needed in the times of emergency immediately following the war. The Lever Food and Fuel Control Act was found useful both in restricting post-war profiteering and in forming the ground of an injunction to restrain a general strike in the soft coal mines. The conclusion is suggested that it might be advisable to confer upon Congress the power to do directly what it has been able to do only through the technical exercise of the war powers. Already the powers of Congress over commerce between the states have been strained to the point of maximum elasticity in certain parts of the field of economic and social legislation. Yet there is clearly need that Congress should possess, for use in time of urgent need, the power to control the distribution of the raw materials of industry by creating priorities for the more essential industries, the power to fix the price of staple foodstuffs and of fuels, the power to regulate the business of insurance, and other similar powers which cannot be exercised effectively by the individual states. It has long been recognized that the constitutional division between the powers "delegated" to the national government and those "reserved" to the states have left unoccupied areas between the prescribed limits of the national jurisdiction and the limits of individual state action. The war powers of Congress led it to enter parts of this unoccupied area, and it would seem that the time has come to confirm its right of legislation by constitutional amendment.

The necessity of reorganizing the relations between the several agencies of the national government has been impressed upon the country even more forcibly since the signing of the armistice than during the actual period of the war. The inefficiency in the conduct of the war resulting from the formal separation of the legislative and executive departments was rendered relatively insignificant in view of the positive accomplishments of the government. The vast contribution made by the United States

to the winning of the war makes criticism of incidental confusion and delay seem meaningless now that the crisis is over. But the deadlock in the machinery of government which has come about as a result of the difference of opinion between the President and the majority of the senate with regard to the ratification of the treaty of peace forms an impressive lesson in the need of a change in the fundamental relations of the legislative and executive departments. The proposal that a constitutional amendment should be adopted providing for the union of the two departments by the establishment of a responsible ministry is doubtless too novel to the public to be expedient at the present moment. The government of the United States has developed along its present lines too long to be abruptly transformed without serious political upheaval, even if any large body of public opinion could be found to endorse the change.

More moderate proposals in the nature of transitional steps towards complete unity may, however, be advocated. The most urgent of these is doubtless the adoption of the budget bill now pending in Congress, the principle of which has been endorsed by both of the great parties. A further suggestion recommends that the administration should propose and explain not only the budget but all of its bills openly in Congress and fix a time when they shall be considered and put to vote. The initiative in legislation would thus be transferred to the administration, without, however, taking from Congress its coördinate power to act should the administration fail to do so. The tendency would be for the administration to take over from the committees of Congress the task of framing the bills, while Congress would exercise wider powers of criticism and control.

It is generally agreed that the price of democratic government under present conditions must be a greater or less degree of inefficiency. With the most perfect machinery of government available democracy would still make but halting progress because of its unwillingness to put the necessary restraints upon its own extravagance and because of its choice of leaders who are either mediocre in ability or reluctant to put forward policies which may bring them into disfavor with current public opinion.

But accepting these conditions as inevitable, it is still important to inquire whether improvements cannot be made in the existing machinery of government, both to make it more responsive to the will of the majority and to enable it to carry out its desired objects with less friction and duplication of effort. The experience of war-time administration in the United States has pointed the way to a number of readjustments which would give added efficiency to the government without loss of democratic control.

ECONOMIC ORGANIZATION FOR WAR

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As shown in the struggle recently ended, modern war means "a nation in arms." The old-time distinction between fighters and workers was almost obliterated, and there was an industrial army as well as an army in the field. The labors of the men and women behind the lines were essential to the effective operations of the men in arms. That this condition was recognized by the governments themselves is shown by the classifications of workers, according to which those whose special skill or ability was essential to the conduct of war industries were taken out or kept out of the army and retained in the factories, mines, workshops, and fields. In various ways the old lines between soldier and civilian, between war operations and the work of production, were broken down. The Germans made no distinction between war vessels and merchantmen. They deliberately destroyed coal mines and factories, growing crops and cattle; this was done with a military purpose, for the sake of lessening the military strength of the enemy. So, too, the former distinction between contraband and free goods was obliterated. Whole nations were in arms, and all their resources were mobilized to carry on the titanic struggle.

This world conflict has taught us that war is not waged altogether by armies in the field. It is a contest between the industrial organization and technique of the opposing nations. It is not carried on by money alone, but by the total resources, material and human, that can be concentrated in a combined, productive effort. The World War gave the first opportunity for a complete application of the modern factory system of production in warfare. Methods of production have been completely revolutionized since the Napoleonic wars, the last general

European struggle, and the smaller conflicts since that time have not involved the complete utilization of the industrial resources of the nations engaged. In the late war, however, the whole productive energies of the belligerent nations were thrown into the fight. The production of raw materials and food, the manufacture of munitions, ships, airplanes, automobiles, clothing, and a multitude of other things, was carried on by the most efficient machine processes and large-scale methods, while the transportation of men and supplies was effected with the utmost expedition.

War has meant, therefore, the industrial organization of the nation, and victory has been dependent not merely upon the number of men in the field and on the seas, nor upon the strategy of warfare, but to an even greater extent upon the effectiveness of the industrial organization behind the lines. This is well illustrated by the complete collapse of Russia, which was inevitable even before the revolution of 1917, and which was due in large measure to the unwise withdrawal of large numbers of men from basic Russian industries, so that with enormous armies in the field it became impossible to furnish them adequately with munitions and other supplies. On the other hand, Germany's industrial reorganization was hastened by the fact that the cutting off of foreign supplies by the British blockade compelled an immediate shift from peace to war production on the part of many factories if they were to survive at all.

During the two and a half years prior to the entrance of the United States into the war, the industries of this country had been gradually organized upon lines of war production for the European belligerents. Certain of the industries that produced those commodities which were in greatest demand had reached a high point of efficiency, but it was on the whole a scrambling, competitive market in which the Entente Allies bought their supplies. There was as yet no coördination of effort, no coöperation or unity of purpose. This was true of production; the Allies early learned through costly experience the necessity of arranging a common purchasing agency.

The government was as ill-prepared and as unfitted as was private industry to assume the task laid upon it by the entrance of this country into the war. In our federal system of government, control of industry has remained for the most part with the states; at only a few points did the national government touch business and trade and exercise control over them, though the tendency in recent years had been in the direction of greater regulation. Beginning with the establishment of the interstate commerce commission in 1887, whose jurisdiction had been gradually extended so as to include telephone and telegraph, express companies, pipe lines, and other common carriers, as well as railroads, the authority of the national government had been steadily widened until it covered the inspection of food, the control of combinations, and currency and finance, and to a lesser extent was able to control competitive enterprise in other directions.

With the entry of the United States into the World War it became necessary to reorganize the industries of the country from a peace to a war basis. At once difficulties unsuspected and at times seemingly almost insuperable presented themselves. The obstacles to be overcome were enormous. The size of the country, the sectional and regional distribution of the industries, and the uncoördinated character of the transportation systems, presented serious physical difficulties. Almost greater were the difficulties of securing unity of sentiment and purpose in the polyglot nation. Public opinion had to be organized, as well as production. The political traditions of liberty and the economic habits of individualism threatened to prevent the coöperation that was necessary for the successful prosecution of the war. The economic virtues of peace were not suited to an effective war-time organization, and many people doubted whether a democracy could successfully cope with a military despotism. The outcome has shown, however, that although its movements may be slow, a democracy once moved to action carries with it an imponderable weight of spiritual power which more than offsets the discipline and obedience of a people trained under militarism.

It took England more than a year to learn that the necessary man power could not be secured for the army by voluntary enlistment, and that the necessary production of war materials could not be left to the voluntary and uncoördinated efforts of industry. Unfortunately, the lesson of England had not been thoroughly taken to heart by the people of the United States. It was necessary for war industry to be stimulated and expanded and for business in general to be readjusted to war requirements. To effect this reorganization the government relied at first upon the ordinary economic incentive of high prices. By affording an opportunity for large profits to the producers of war materials, it hoped to divert a sufficient number of establishments and labor into war production to yield the necessary supplies. In fact the program of the administration, which planned the spending of nineteen billion dollars in the first year, surpassed the productive capacity of the plants that could be diverted to these purposes.

In time, no doubt, such a policy would secure the necessary readjustment of business to war requirements. Capital and labor would be withdrawn from the production of nonessentials and these by reason of their scarcity would rise in price. At the same time the absorption of the surplus income of the people in taxes and subscriptions to bonds would leave them less to spend for such purposes. Such a shift of production is, however, slow at best, and it was opposed in this country, as in England, by the slogan of "business as usual" and by the expenditure on the part of wage earners of their unprecedentedly high wages for luxuries. It was evident that the volunteer system, whether for the raising of an army or for the mobilization of labor and capital in war production, was inadequate. During the first few months much was done; production was stimulated, and the foundations were laid for future work on a large scale. But there was great confusion, conflict of counsel, and little real guidance.

It was clear that coördination of effort was needed, and that this could be had only through the extension of government control. Unfortunately, however, no centralized administration

was set up for dealing with the problems of the war as a whole. We did not even go so far in the direction of administrative unification as did the English by the establishment of a ministry of munitions. A promising agency had, indeed, been created in August, 1916, known as the council of national defense, which was organized the following March, but this was a loose organization with purely advisory functions. It consisted of the secretaries of war, the navy, agriculture, interior, commerce, and labor, and was assisted by an advisory commission of seven civilians. The first work of the council was the consideration of plans for industrial mobilization and the collection of information as to the industrial resources of the country. For this purpose each of the seven members of the advisory commission was appointed chairman of a committee in charge of a field for which he possessed special knowledge, the subcommittees covering munitions, supplies, raw materials, transportation, engineering and education, medicine, and labor. These committees did much to work out the preliminary problems in connection with the subjects over which they had jurisdiction, and by reason of the ability and knowledge of those who were called to serve, their advice was generally accepted. As the war progressed, however, it was clear that strong administrative boards must be created to handle the problems authoritatively, and the original functions of the council of national defense were consequently gradually taken over by the various war boards.

First in chronological order, and possibly in order of importance came the shipping board. The circumstance which brought the United States into the war, namely, the unrestricted use of submarines by Germany, pointed to one of the greatest dangers that threatened the allied cause. It was of no use to raise food, to produce supplies, or to train soldiers if they could not be transported to Europe. The shipping problem was without question of fundamental importance. The United States shipping board, authorized by act of Congress on September 7, 1916, was organized for business the following January, and was given control of all shipping registered in the United States. Later it received power to requisition any American vessel, and shortly

after it took over the completion of all ships then building in American yards. The interned German vessels were also under its control.

The actual construction of vessels was intrusted to the government-owned emergency fleet corporation, which was organized for the sake of speed in action and the avoidance of governmental red tape. Delayed for a time by controversies over the respective merits of steel and wooden and concrete ships, a year elapsed before results began to be evident. Much was done in the interval, however, in bringing about a more economical utilization of existing shipping facilities. By the diversion of ships from longer to shorter voyages and from the carriage of nonessentials to the transportation of troops and supplies; by means of better loading and quicker turn-arounds so that ships could make more voyages in the course of a year, the availability of existing tonnage was greatly increased. In spite of the continued sinkings by submarines and consequent loss in total world tonnage, there was an actual increase in the amount of goods carried.

Next to the necessity of providing ships, the most important problem before the American people was the furnishing of a sufficient supply of food for our army in France and for the allied countries. Never wholly self-sufficient, the countries of Europe were now less than ever able to produce food sufficient for their own requirements, and even in the first three years of the war made heavy drafts upon the stores of the United States. In this country the rapid growth of the population and the building up of great urban centers had created a situation in which the food production of the United States merely sufficed for the needs of our own people. The enormous exports of thirty years previous had entirely disappeared, and it is safe to say that if the World War had not occurred, the United States would even now be importing foodstuffs instead of exporting them. The problem which presented itself, therefore, was a twofold one: first, to increase the production of food; and second, to reduce its domestic consumption.

In contrast with the work along other lines, the control of food was administered at the beginning entirely upon a volunteer basis. To carry out this policy a food administrator was appointed. The coöperation of consumers was secured; they were asked to observe wheatless and meatless days, to consume less sugar and wheat, and in other respects to conform to the regulations of the food administration. Voluntary coöperation, however, was not sufficient, and authority for comprehensive control of the food situation was given by the Food and Fuel Control Act of August 10, 1917. The purpose of this act was to assure an adequate supply and to facilitate the movement of food, to prevent monopolization and speculation, and to establish government control of necessaries during the war. For the purpose of buying the necessary food supplies for the military forces, for the Allies and for the Red Cross and similar agencies, a grain corporation was organized, all of whose stock was owned by the government. An effective method of domestic control over the food supplies of the nation was devised in the license system, which affected cold-storage warehouses, other warehouses and elevators, importers, manufacturers and distributors of the more important food products, brewers, manufacturers and dealers in farm implements and machinery, etc. Control was also exercised over prices by a system of fixation of reasonable prices and profits. Finally, the amount of various food products that could be used by manufacturers and consumers was carefully regulated. By all these methods there was secured a surplus of food for our armies and the Allies, and at the same time the people of the United States were protected against excessive prices.

Another economic problem connected with the war which became most familiar to the people of the United States was that of obtaining an adequate fuel supply; this undoubtedly ranked next in importance after shipping and food. The hope of acquiring additional sources of coal supply was undoubtedly one of the factors that induced Germany to enter upon the war, and the control and stimulation of coal production during the war was one of the urgent problems before all the belligerents.

In the United States the control of fuel was provided for by the creation in August, 1917, of the United States fuel administration. There were three aspects of the coal problem which developed as time went on, and to cope with them different divisions were established. These were production, conservation, and car service. To the production division was given the task of stimulating the production of coal throughout the country, which was done by educating and inspiring the laborers. The conservation division sought to save coal by a program of education of consumers, and that of car service achieved a better distribution and movement of cars. During the winter of 1917–18 the serious congestion of the railway transportation service and the severity of the weather brought about a coal famine which was met by the temporary expedient of coalless days and lightless nights. As a result of this experience a license system for dealers was thereafter adopted, and a zone system of distribution was put into effect which was designed to eliminate crosshauling of coal.

If the industrial resources of the country were to be effectively mobilized for war, it was evident that a further step would have to be taken to secure coöperation and harmonious unified action of the productive forces of the nation. To secure these ends the war industries board was created. At first a subordinate body of the council of national defense, it soon became so important that it practically absorbed the parent body. Its chief activities fell under the three heads of procuring supplies for the army and navy, in which it acted in an advisory capacity; of securing preferences in production and delivery for government orders, which soon led to the establishment of priorities; and, finally, of securing supplies at a reasonable price. As a result of criticisms, the board was completely reorganized in March, 1918, and the administration was highly centralized in the chairman. The functions of the board were well described in a letter of the President of March 4, 1918:

(1) The creation of new facilities and the disclosing, if necessary the opening up, of new or additional sources of supply;

(2) The conversion of existing facilities, when necessary, to new uses;

(3) The studious conservation of resources and facilities by scientific, commercial and industrial economies;

(4) Advice to the several purchasing agencies of the government with regard to the prices to be paid;

(5) The determination, wherever necessary, of priorities of production and of deliveries, and of the proportions of any given article, to be made immediately accessible to the several purchasing agencies, when the supply of that article is insufficient, either temporarily or permanently;

(6) The making of purchases for the Allies.

By virtue of its wide powers and the importance of its functions, the war industries board exercised an increasingly strict control over the industries of the country and promised to become the sole directing governmental agency. By means of its priorities division, working in connection with the fuel and railroad administrations, it was able to secure the diversion of raw materials to necessary war production and to ensure maximum output from industries engaged in war work. Unavoidably under such a program, nonessential industries suffered or went out of existence. Preference lists were established which placed industries in the order of their importance, on the basis of which classification they were accorded fuel, materials, labor, and transportation. The policy of price control, which was administered in coöperation with a number of other boards and departments of the government, was steadily broadened.

The regulation of foreign trade came much later than the other extensions of governmental control that have been described. But it was finally realized that if the blockade was to be thoroughly enforced against the Central Powers, a most effective weapon lay in the hands of the United States, from which was drawn so large a proportion of raw materials, munitions, foodstuffs, and other supplies going to Europe. The passage of the Espionage Act in June, 1917, permitted a larger control over passports and exports, and to deal with these a bureau of export licenses was soon organized. It was evident,

however, that broader powers were necessary for dealing with the situation, and finally, in October, a war trade board was created, which, in conjunction with the activities of the alien property custodian, possessed full power to curtail enemy trade. The activities of the board may be roughly grouped in three divisions: those relating to the control of exports; those relating to the control of imports; and those relating to enemy trade.

In order to provide that the resources of the country should be used primarily for the prosecution of the war, export conservation lists were established which either prohibited or placed under license the export of a specified list of commodities which were essential for war purposes. By the time the armistice was concluded, a thoroughgoing machinery had been worked out for the virtual rationing of neutral countries. Similarly, imports were classified according to their importance and nonessential imports were rigidly restricted. Those which were necessary for war purposes, either to ourselves or to our Allies, were given every preference in the matter of shipping; as the available tonnage was strictly limited, this meant that the shipment of nonessential imports was rendered uncertain or impossible.

An elaborate machinery was also built up for the study and control of enemy trade. Through a widely ramified intelligence system it gained information of firms with enemy affiliation, drew up blacklists, and sought to lessen all trading with the enemy. Allied with this last function was the work of the alien property custodian, whose duty it was to search out, segregate, and administer the property of alien enemies within the United States. Within a year nearly a billion dollars worth of such property was found, much of which was liquidated and transferred to American ownership, the proceeds being converted into liberty bonds and held in trust for the former owners.

The railroads of the United States had never constituted a unified system. Coördination and combination were prevented in part by competition among the roads themselves and in greater measure by legislation. Some six or eight groups of railroads controlled three-fourths of the mileage of the country, but these had effected a fairly distinct regional division of the country

and between them there was little harmony of action. For some years the increase and improvement of track and rolling stock had failed to keep pace with the increase of traffic. When the United States entered the war, therefore, the railroads were fitted neither by organization nor by physical equipment for meeting the enormous tasks which were laid upon them. With the construction of new cantonments, shipyards, and munition plants and the expansion of established industries, new currents of freight began to flow in ever swelling volume, often by unaccustomed channels. As the military program expanded during the summer and fall of 1917, calling for movements of men as well as supplies, serious congestion occurred. As the winter approached the unusual need for fuel, added to the other demands threatened to break down the railroad system. Efforts on the part of the fuel administrator to lessen the pressure by a zone system of fuel distribution and better routing, and the inauguration of a system of priorities by the priorities board proved unavailing, and finally, in December, 1917, the President assumed military control of the railroads, and named the secretary of the treasury as director-general of railroads.

The first effort of the railroad administration was to relieve congestion and secure a more direct and expeditious movement of freight. Subsequent financial legislation permitted the railroad administration to spend enormous sums for betterments and extensions, to increase wages, and to raise freight and passenger rates. Contracts were negotiated with the owners of railroad property for compensation upon the basis of three years' earnings. Under the national administration the operating efficiency of the railroads was increased, freight cars were made to carry heavier loads, cars were freely moved from one road to another and routed over the shortest lines available. Passenger schedules were cut and duplications largely eliminated. City ticket offices were consolidated, and terminal facilities were effectually pooled. By means of these and other changes the service and efficiency of the railroads were greatly increased, and they were made an efficient machine in the general war program.

Among all the problems created by the war perhaps no more serious or far-reaching one existed than that involved in the diversion of labor from normal peace occupations into war activities. The first task that presented itself was that of attracting the necessary labor supply into war industry, and this was done by the inducement of higher wages and also by the threat of conscription of those who did not assume their proper position in the work behind the lines. The keynote was struck by General Crowder's famous "work or fight" order:

"Every man, in the draft age at least, must work or fight. This is not alone a war of military manoeuvers. It is a deadly contest of industries and mechanics. Germany must not be thought of as merely possessing an army; we must think of her as *being* an army—an army in which every factory and loom in the Empire is a recognized part in a complete machine running night and day at terrific speed. We must make ourselves the same sort of effective machine. We must make vast withdrawals for the Army, and immediately close up the ranks of industry behind the gap with an accelerating production of every useful thing in necessary measure. How is this to be done? The answer is plain. The first step toward the solution of the difficulty is to prohibit the engagement by able-bodied men in the field of hurtful employment, idleness, or ineffectual employment, and thus induce and persuade the vast wasted excess into useful fields."

As a result of the withdrawal of so many men from industry into the army, great changes occurred in the position of labor. Many women were attracted into industry, some taking the places of men. Wages were raised to unprecedented heights, partly as a result of scarcity of labor, partly through competitive bidding of the new war industries, and partly because of the general depreciation of money. Old standards and peace rates were disturbed, and new and untested situations were often created. To meet these problems and to secure better organization and direction of the labor supply, several government boards were created. There was the national war labor policies board, whose task it was to formulate a comprehensive policy,

and which was composed of representatives of the departments of labor, war, the navy, and agriculture, of the war industries and shipping boards, and of the fuel, food, and railroad administrations. Parallel with this was the national war labor board, which acted as a court of final appeal in labor disputes. The United States employment service had exclusive control after August 1, 1918, of the recruiting of unskilled labor. Although organized too late for full service during the war, it was of incalculable value in helping to solve the problems of demobilization. Finally the bureau of industrial housing had charge of an activity which was increasingly recognized as essential in any industrial war program. Every shipyard, ordinance plant, and newly built industrial establishment found the construction of houses for the accommodation of workers as necessary as the building of the plant itself. The emergency fleet corporation had secured a specific appropriation for its needs, and in May, 1918, funds were given to the department of labor for similar housing projects throughout the country.

The regulation and control of the activities of a whole nation in the prosecution of a war program necessarily interfered with normal industries. In order to secure the full application of the human and material resources of the country to war purposes, a distinction fundamental and far-reaching was made between essential and nonessential lines of production. To those regarded as necessary, priorities were granted in securing raw materials, transportation facilities, fuel, and labor. By this method the less essential industries were restricted or even in some cases starved to death. War is ruthless, and in many cases the unoffending were compelled to suffer.

Another effective method of control was that of price fixing. Since it was desired above all to stimulate production, prices were fixed at levels that would induce enlarged output. Perhaps the most striking illustration of this was the guarantee by the government of a minimum price of $2.26 a bushel for wheat. Although a fund of $1,000,000,000 was set aside to meet the possible loss occasioned by this guarantee, the price was probably not too high to pay as it resulted in the largest crop of wheat

ever harvested in the United States. Another method was the denial to private corporations of the privilege of issuing securities and thereby diverting capital into the promotion of nonessential industries. It has been estimated that approximately $5,000,000,000 of the national income is annually invested in new undertakings in normal times. Every effort was made to secure the diversion of this suplus income into war production. As time went on not even the issue of state and municipal bonds was allowed to compete with the flotation of war loans. The banks were directed to curtail loans and credit facilities to proscribed activities. Nonessential industries and undesirable consumption were also controlled by export and import regulations and, in some instances, by the prohibition of trading with the enemy.

But not merely were producers and dealers controlled with a view to conservation of the nation's resources and their direction into war channels; the consumer, too, was restricted in the free expenditure of his income. Private consumption during the war was effectually curtailed: by the withdrawal of certain goods from the market and by rationing the distribution of some of the primary necessities; as a result of high prices which placed certain articles beyond the reach of all but well-to-do persons; by a tax policy which imposed particularly heavy burdens on those articles the production or consumption of which it was desired to discourage; and, finally, by the absorption on the part of the government of the surplus funds of the people in war loans.

The articles that disappeared from the market were for the most part imported luxuries which were unable to secure shipping space, and the stocks of which in this country were soon exhausted. High prices were themselves a conserving force, for consumption of nonessentials lessened as the purchasing power of the dollar decreased. To some extent this process was hastened by taxation, but on the whole the burden of war taxes in this country fell upon incomes and wealth rather than upon consumable commodities. The so-called luxury tax was not enacted until three months after the armistice was signed.

Much more effective in regulating consumption was the policy of rationing. Every active belligerent and many neutrals were compelled during the course of the war to ration the food supply. Bureaus of food control were set up, food values tested, substitutes planned, meatless, wheatless, and sweetless days inaugurated, the use of cereals in the production of beverages restricted or prohibited, a nation-wide educational propaganda organized, and recipes providing for the utilization of less scarce forms of food were worked out and distributed broadcast. As a result of this educational work enormous savings in food were effected. The social conscience tended to suppress the purchase of luxuries, and many people completely revised their systems of values.

Possibly the most enduring lesson of the war, as well as one most needed by the American people, has been the inculcation of thrift. This was enforced by some of the methods just described. But it was made a gospel in the appeals to help win the war by purchasing war bonds and thrift and war savings stamps. The billion dollars invested in thrift stamps and war savings stamps in the United States in the year 1918 may safely be assumed to have come from small savings, representing a sum almost wholly diverted from the consumption of goods.

The economic problem presented by the war is clear enough now, but it was but dimly understood at the beginning of the war. The machinery for coping with it was only slowly developed. Social production must be developed to its maximum and directed into the single channel of winning the war. This involved an increase of those things needed for war purposes and a corresponding decrease in the production of commodities that did not contribute to that end. All useless and unproductive spending had to cease. This involved a readjustment of established industries, which was secured only at great cost. The social loss entailed by such industrial readjustment is a serious, though generally uncounted, item in the cost of the war.

But not merely was a reorganization of industry imperative; it was absolutely essential that results be produced quickly. The test of efficiency became the speed with which men and materials could be rendered available. At this point, however,

the insistence that business should proceed as usual proved an obstacle to a quick and effective transition from a peace to a war basis and to that extent delayed the adoption of an intelligent, comprehensive war program. Lack of perspective, incoherent effort, mistaken decisions were responsible for much loss of time. Moreover, the United States was not able at any time to draw upon foreign supplies but had to depend altogether upon domestic resources.

Thus far there have been described only the new governmental organizations and activities called into being by the war, but it would be unfair not to mention also the work performed by the older agencies of the government. First among these, of course, stands the war department. At the time of the entrance of the United States into the war the central organization of the department consisted of various administrative bureaus and of a general staff under the chief of staff. The enormous expansion of the military establishment and the rapid developments in military science during the war necessitated a considerable modification of this organization and the formation of several new services. For the purpose of overseeing and coördinating the different functions a war council was early created. The raising of an army by conscription, its training and care, the procurement of the enormous supplies needed, and other duties on the huge scale demanded, called into being an organization which steadily grew more efficient as the war progressed. New supply services embraced such novel units as the chemical warfare service, the motor transport corps, the aircraft service, and others. The various supply bureaus were supervised by the purchase, storage and traffic division of the general staff, and later were to a large extent consolidated in a more centralized system, with the first assistant secretary of war as director of munitions.

Upon the navy fell the task of protecting the sea lanes to Europe for the safe and successful transport of men and supplies. Owing to the fact that the organization of the department had been greatly improved in the period immediately preceding the war, little change was made in method. But the personnel and material equipment were greatly expanded, while the exi-

gencies of submarine warfare called for new types of vessels, the laying of mine barrages, and the arming of merchant vessels. The personnel of the navy grew from 65,777 men at the outbreak of the war to 497,030 at the end, and the number of vessels from 197 to 2003. Through the allied naval council the department maintained close touch with the allied navies in order to obtain coördination of effort at sea and of scientific operations connected with the conduct of war.

Scarcely less important than the two services just named was the treasury department. The war placed upon it the responsibility of finding new sources of revenue, devising improved methods of taxation, interpreting and administering the new revenue laws, and determining, within the limits set by Congress, the management of the enormous new revenues, the procedure in extending credit to the Allies, the dates, terms, and amounts of the liberty loans, and the best methods of marketing bonds, treasury certificates, and war savings stamps. New treasury branches were organized, of which the most important were: the war risk insurance bureau, which administered a system of marine and soldiers' insurance; the war loan organization to conduct the advertisement, sale, and distribution of liberty loans; and the foreign loan bureau, which was charged with the supervision of loans to foreign governments. There should also be mentioned the federal reserve board (established in 1913), whose powers of control over the federal reserve banks were greatly strengthened during the war, and which guided their policies so as best to serve the interests of the treasury and the public. Finally there was the war finance corporation, which was first created to provide financial assistance to enterprises engaged in the production of war materials or of articles of vital public interest, and after the armistice was authorized to make advances to exporters of domestic goods or to banks financing such exports. It also purchased, on behalf of the treasury department, liberty bonds in the open market. The capital issues committee controlled the issue of new securities.

Other branches of the government also expanded their pre-war organizations to meet the new demands upon them. The depart-

ment of state, in spite of its invaluable services, showed possibly the least external change. The post office department developed such new services as the establishment of a mail service for the military and naval forces, the operation of the telegraph and telephone systems under government control, the execution of certain provisions of the Espionage and the Trading with the Enemy Acts, and similar activities. The department of commerce carried on its war activities primarily through such subordinate bureaus as those of standards and navigation. The department of the interior carried on manifold activities through its regularly organized bureaus, such as investigations regarding the mineral industries of the United States, the materials and methods of gas and flame fighting, and lubricants for aviation purposes, the making of military maps, the readjustment of courses of study in the public schools, and the stimulation of home gardening. The department of agriculture rendered analogous service in the way of locating various types of timber, making food surveys to determine the quantities of food, food materials, and feed in the country, advising as to meteorological conditions in connection with the location of camps and military aeronautics, overseeing the granting of seed grain loans, and inspecting meats and dairy products for the war and navy departments. The work of the department of labor has already been referred to in connection with the national war labor board, which was organized to adjust labor disputes in the fields of production necessary to the effective conduct of the war. Through the industrial housing and transportation service, the information and education service, the training and dilution service, the introduction of women in industry, and other similar services, the department assisted effectively in mobilizing the labor forces of the country for war work.

Coördination in the activities of these various agencies was secured for the most part through frequent personal conferences rather than by the establishment of a formal organization for this purpose. Under the Overman Act, which gave the President broad powers of readjusting the administrative machinery, some changes and transfers of functions were made within and between

departments and other governmental agencies. A sort of clearing house of information as to war activities was obtained with the creation of the central bureau of planning and statistics in May, 1918;[1] but the full development along this line had not been reached when the armistice brought many of the activities to an end.

Not merely was coördinated action among the various agencies of the United States government necessary; even more essential were harmony and unity among the Allies in the conduct of the war. This was realized especially after the entrance into the war of the United States, and to secure this end various organizations were established for economic purposes. The first of these was the inter-allied conference, which was held at Paris, November 29 to December 3, 1917, for the purpose of considering the best means for prosecuting the war. The inter-allied finance council was at this date in process of organization; and there were now formed similar councils on food, for the allocation of stocks of food; on munitions, to make programs for finished products used by the allied armies and for raw materials required for their manufacture; and on maritime transport, whose purpose it was to supervise the general conduct of allied transport and to obtain the most effective use of tonnage, while leaving each nation responsible for the management of the vessels under its control. Other similar councils created from time to time were the allied naval council, the allied provisions export commission (later merged in the food council), the inter-allied petroleum commission, the inter-allied pig tin pool, the inter-allied sanitary commission, and the inter-allied council on war purchases and finance. This last named body was organized to coördinate purchases by the Allies, to serve as a clearing house for information as to allied needs for funds, and to develop a unified policy relating to loans to the various associated and allied nations by the United States and other countries. The United States was represented on all of these bodies, and in some of them, such as the last, occupied a most influential position.

[1] Cf. F. L. Paxson, "The American War Government, 1917–1918," in *American Historical Review*, xxvi, 54, 73–4 (October, 1920).

While mistakes were often made and the machinery creaked and groaned at times, it was gradually improved until by the time of the armistice an effective machinery was at work. Gradually the domestic difficulties of lack of organization, of inexperience, and of ignorance were overcome, and it may be fairly asserted that by the middle of the year 1918, the nation had been organized for war production on a scale which in 1914 would have been deemed impossible. Shipping, the production of food, fuel, manufactures, trade, and transportation were welded together into one mighty machine. Labor responded loyally to the call for an increased output, and consumers with equal patriotism voluntarily restricted their consumption of articles needed abroad.

With the signing of the armistice the powerful national war organization slackened its efforts, so far as it was directed toward destructive ends, and since that time it has been gradually disbanded. There remains, however, a certain amount of control and of expanded governmental activities as a result of the war, some of which will probably persist. New duties have been placed upon the government and new opportunities for service have been accepted, so that the net result of the participation by the United States in the war will be a permanent enlargement of the functions of the national government.

THE LUXEMBURG CHAMBER OF DEPUTIES

RUTH PUTNAM

Why should legislative proceedings in the grand duchy of Luxemburg be given consideration? It is a country with an area less than that of Rhode Island and with a population (260,000) which would barely fill a second class city—a mere atom in the world's history. Nor has it played an heroic part in the great crisis. Here is the excuse. The discussions in the chamber of deputies have reflected, not in their depths but in their shallows, nearly all the phases of the seething unrest which agitates larger nations, and therein lies the reason for offering a few pictures drawn from the official records of the grand ducal chamber—the German reports as they are sent out daily, translated from the proceedings in French, and the final French *comptes-rendus*. They are miniatures of the processes of readjustment in progress across the Atlantic.[1]

The Luxemburg chamber of deputies is a legislative body that has been evolved by a series of still visible leaps and jumps from the simplest feudal conditions to the assembly recently elected by universal adult suffrage on a basis of proportional party representation according to the system of the *scrutin de liste*. Its modernity is so complete that a Socialist woman has obtained a seat, yet the conservative character of the forbears of the body is not entirely lost to view in the mists of the past.

The old duchy of Luxemburg—a countship until raised to higher dignity by an imperial brother of its count (1354)—lost its early independence in the fifteenth century (1441), and thenceforth shared the political lot of the Belgic provinces under Burgundian, Spanish and Austrian rule. There was one interlude

[1] The official language is French but German is allowed. The reports (*die Kammerberichte*) in German were formerly distributed gratis. There is now a charge of two francs.

for Luxemburg when it passed to France, but that experience was brief and it returned to political association with its Belgic neighbors. But under the shifting fortunes, a certain autonomy was preserved, together with home rule in local affairs, and at an early epoch there existed a small representative assembly to receive the ruler's oath on accession, to assert inherited privileges, to vote supplies and to provide, very reluctantly, extra subsidies for wars.[2] There was no right of self convention but the ruler found it necessary to assemble nobles and cities in order to obtain funds. The clergy had no official share until the sixteenth century. Thenceforward the "estates" was a simple gathering of instructed delegates from three classes of society, who were empowered to report and act upon the sentiments of their principals. They seldom even met *in plenum*.

This type of parliament remained until 1795, when the French republic swept the conquered duchy, renamed the Forest Canton, into its pale as one of the ten annexed Belgic provinces. An attempt was made to brush away feudal adhesions with provincial differentiations and to create a departmental assembly on the model adopted for all French districts. In 1815, the Congress of Vienna ordered this work undone and restored its proper name to Luxemburg, while adding the grand ducal dignity and providing for the representation of its newly appointed sovereign—the king of the Netherlands—in the new German confederation. At this crisis, as before in its history, conservatism in its reaction failed to reject all constitutional changes that had been foisted upon the land. Certain elements of the revolution took root. For instance, clerical representation in the provincial assembly was not restored. In the early nineteenth century the three orders to send delegates were nobles, cities, and country districts. Other elements, too, have lingered to prove the power of French theories over contiguous states.

The troubles of the new grand duke, William I of Holland, with the United Netherlands, finally caused a reduction of the

[2] After the union with the Belgic provinces, Luxemburg was also entitled to send delegates to the States General of the Netherlands, but the autonomy of the local estates was still maintained. The tenth penny was never imposed.

little territory to its present area of 998 square miles (1839). One-half of the ancient duchy fell to Belgium as a province, and the other was launched on an independent career. The governor was appointed by the king-grand duke at the Hague, but Luxemburg was to control her own domestic affairs. The imposed constitution of 1841 settled the type of deputies to be elected to conduct legislation. It was expressly provided that they were, each and every one, to act in behalf of the whole land and not as the mouthpiece of any constituency or class. In 1842, Luxemburg entered the German *Zollverein*. New constitutions, drafted and accepted in 1848 and 1856, were respectively progressive and reactionary. In 1867 novel conditions arising from the provisions of the Treaty of London necessitated readjustment. While remaining in the customs union, though severed definitely from the German diet—where her sovereign had been represented by one delegate for Luxemburg and Limburg combined—neutralised and thus isolated, Luxemburg adopted a new fundamental law with 121 articles which covered nearly all affairs of daily life within the small nation.

This constitution (1868–1919), provided for a limited monarchical form of government under a sovereign grand duke assisted by an appointed council of state in lieu of an upper house, by an elected chamber of deputies—one for every 5000 inhabitants—and by a ministry responsible to the chamber. The council of state is a remnant of French republican institutions. During the nineteenth century changes this body fell into desuetude, but was revived in 1868. The fifteen members are appointed without term to serve in a capacity both judicial and administrative. Seven of the members constitute a judicial committee, *comité du contentieux*, which acts as an administrative court of final appeal. As an adviser to the government, the council has administrative, in endorsing the action of the elected chamber, legislative, functions. In no sense is it aristocratic; the only qualification for appointment, beyond the qualifications for deputies, is five years additional age, and doctorates of law for the seven members of the judicial committee.

The cabinet consists of the minister of state or president of the government, equivalent to the ordinary prime minister, and ministers of finance, agriculture, commerce and industry (one office), education, and public works. At the sessions of the chamber, these gentlemen have seats on the left of the speaker or president, and are bound to furnish all information asked for regarding their respective departments, if notified in advance of an intended interpellation. It may be observed that the order of the day prepared and accepted beforehand, does not exclude informal and vivacious interruption. General business is sifted by means of three sections into which the whole body is divided by lot, the names being drawn from an urn by the president of the chamber, who is elected at the beginning of each session. The lot method is also used for the selection of certain committees or commissions for special purposes. Others are elected.

Any plan leaves openings for possible clashes between executive and legislative authority, and such have occurred in Luxemburg, but during more than half of the life of the 1868 constitution, one important element ensured practical stability. Prior to his death in 1915, Paul Eyschen held the office of minister of state under four administrations and for a period of over twenty-eight years. Standing as he did between the people and successive rulers, three of whom found him in office when they arrived on the scene, it is probable that a fair condition of acquiescent political calm existed in the land on the eve of the war.

In 1890, the grand ducal title had passed from the king of Holland to his nearest male relative, Adolph of Nassau. As fate gave only daughters (six) to this grand duke's son William, the Salic law was formally set aside in 1907, and 1914 found Marie Adelaide as sovereign grand duchess. In the early summer, the regular triennial elections had taken place in several districts (Echternach, Luxemburg district, Remich, Mersch and Wiltz), while a few other vacant seats had been filled, but the new body had not been organized. Out of 53 deputies, a few were new to their work: 4 lawyers, 2 engineers, 1 railway employee, 1 workman, 1 physician, 1 merchant, and 1 landed proprietor. Among their predecessors had been landed proprietors, physicians,

lawyers of various degrees, merchants, and one workman. Probably as far as conservatism was concerned there was not a great change.

When the crucial events of the last week in July, 1914, showed the precarious situation of the grand duchy between the preparing belligerents, Eyschen advised the grand duchess to convene the chamber in extraordinary session. There was no delay. The summons was issued on Saturday and the body was convened on Monday, August 3, by M. Eyschen in the name of Marie Adelaide, with a brief explanation of the situation that demanded the call. After organization, the newly elected chairman, M. Laval, a man sixty-nine years old, opened the session with an appeal to his colleagues to forget all dissensions and to be united in love for their country.

"Let us set our people an example of calmness. Let us implore them to observe the reserve and the dignity fitting for the present hour and advise them to abstain from every turbulent and untimely manifestation, while scrupulously fulfilling the duties imposed by our situation. That will be the gauge of our safety." And he was sure that from the four corners of the land the valiant Luxemburgers would accept his words.

M. Eyschen then proceeded to recount exactly what had happened in the grand duchy during the preceding forty-eight hours, when the world had been breathlessly watching the clouds gather. Their frontiers were closing on all sides. He had turned to the right and the left in vain. On July 31, Belgium, herself in hard straits, had refused to let supplies come from Antwerp, the natural port. Germany was willing to buy the harvests standing on the east side of the rivers, but would not let their owners reap them. Telegrams to Berlin—from Eyschen to the ministers, from Marie Adelaide to the Kaiser—had not prevented the entry of German troops into the defenceless state, nor had they brought any adequate explanations beyond the assertions: "For previous understanding with the Luxemburg government, there was no time in the face of the menacing danger" [France], "and Germany would pay for all damage."

With the full knowledge that all accusations of French aggression were lies, with the plainest proofs to the contrary before his eyes, Eyschen found himself powerless to follow up his protests. He had done all that was "humanly possible." "You know that in Germany as soon as war is proclaimed, civil authority disappears and all affairs, all civil administration, passes into the hands of military authorities. Yesterday when an officer came to see me, I put the question, 'What is your attitude in regard to the Luxemburg government?' He replied that it should be respected. I objected to his placing three (German) functionaries in the post office and he promised to withdraw them. I trust that this consideration will endure and that our administration will not be touched and that our legislation will be left alone."

The minister's statement in regard to the circulation of automobiles was almost naïve. Asked by the German for a personal guarantee for every car, the minister replied that though he might know the owners, it would be an embarrassing matter to vouch for the chauffeurs, and that he really did not know what to do. Then the German general suggested that the cars might all be collected in one place "for their protection so that they should not be destroyed." This produced sufficient laughter among the deputies to make the chairman beg abstinence from approval or disapproval. Nevertheless, in spite of a certain feebleness in his attitude, a feebleness induced by the *impasse* in which he found himself, Eyschen obtained the support of the chamber. Brasseur, leader of the Liberal group, moved in behalf of himself and a "certain number of my colleagues" that:

"The chamber, after hearing the declaration of M. the minister of state, associates itself in the protests made to the German government and communicated to the powers signatory of the Treaty of London, 1867, and approves the acts of the grand ducal government and passes to the order of the day."

A rising vote was taken and not a member remained in his seat. Thus, in 1914, the grand duchy, through the government and chamber, accepted the condition of forced acquiescence in German invasion unanimously, having simply registered formal protests.

When the opening of the chamber took place on its regularly appointed Tuesday in November, Marie Adelaide came in state and made her annual address. After touching on the heartrending aspect of the monstrous war, and the formal action taken in August, she declared:

"Our rights remain intact although they have been slighted. The pledge has been given that the damage will be repaired. . . . . The country does not consider itself freed from the obligations imposed by the international treaties. Our protest exists and we will maintain it in all its tenor."

M. Brasseur, the Liberal, replied to her address, assuring her of the loyalty of the chamber and the world, of the stability of the grand duchy, free and independent.

On her part Marie Adelaide was "happy to know" the perfect unity of views existing between the crown and the elected representatives of the country. That was on November 17, 1914. The land had submitted to force but it was united and meant to remain so in the face of a dire necessity. Still it seems a not unwarranted inference that there was a partial if not universal belief that the German arms were to be victorious. Ten months after the armistice, a deputy, Schaack, said in the chamber: "Had Germany won the victory, the grand duchess would still be on the throne but the land would be a German confederated state and the people would be under the 'boot.'"

The assertion was denied indignantly and the speaker told that he did not even believe it himself, but it has some show of probability. Nor does it appear that Eyschen would have resisted the tendency towards closer German affiliation, and he was actual executive and adviser of the young sovereign. That statesman knew his Europe, as it appeared to the eyes of many observers on the borderlands, and he knew international politics, after nearly thirty years in public life during the rise of Germany. Within limitations natural to his class he had experience and knowledge. The exhaustive article on "The Political Law of the Grand Duchy of Luxemburg" was written by him for Marquardsen's series of handbooks on public law. Moreover he represented the grand duchy at the Hague conferences of 1899

and 1907, and had taken larger part in the discussion of the rights of neutrals than delegates from more important states. He knew Berlin and the men surrounding the Kaiser. If he thought that the ultimate fate of his own land might be incorporation into the German Empire, it was because he had followed the trend of commercial affiliation closely and had reason to assume an inevitable consequence of business connections. Eyschen's intimate knowledge of the theory of neutral rights did not greatly help Luxemburg, but probably his acquaintance with the German personnel aided him to soften some of the inconveniences of that first German occupation, passage, and requisitions. The amount paid by Germany within the first eighteen months of the war is estimated at $250,000. That there was any payment at all is probably due to Eyschen.

The real sentiment in the country during 1914–15 is hard to gauge accurately, in spite of the official dictum that government and people were at one. If the majority were pro-ally from the beginning, a lack of belief in their victory led to some concealment of preference. But there were many and potent proofs of warm sympathy. A Munich paper declared that Luxemburgers were so ungrateful for Germany's kindness that 8000 men had joined the ranks of her foe. This was Teutonic exaggeration, but before the war was over, it was true of more than one-third of that number.

The calming influence of one hand, steadied by long experience, free from ministerial crisis, did its work for a time; but Eyschen's death in October, 1915, threw the governmental machinery completely out of gear, and opposition to his general conciliatory policy gained ground in the chamber. After some little delay, Hubert Loutsch took the portfolio, but at once found himself at odds with the deputies; a vote to test confidence resulted 26 to 25 against him and he resigned. His successor, Vannerius, held office for less than a month, and then a Catholic-Liberal-Socialist cabinet was formed with Victor Thorn at the head. He received a vote of confidence 39 to 1; but it was soon plain that the old order of a stable, fairly acquiescent government was gone forever. The spirit of the land had changed.

Socialists and radicals, to be sure, were no new apparition among the grand ducal deputies. Before the crisis, several had been elected and seated without any such trepidation as was excited by their party name in America, and their voice has grown louder since 1918. Thorn did not prove a staying power and he yielded his office to the director of finance in his cabinet, Léon Kauffman, who managed to keep his post in the face of much unpopularity, for over a year; but his identification with the betrothal of Antoinette, the fourth princess of the grand ducal house, to Ruprecht of Bavaria, forced his resignation. This event took place in the summer of 1918, when German defeat was sure and pro-ally sentiment dared to manifest itself boldly. Again there was an election, and in spite of the increasing discontent and radicalism that was surging everywhere, the conservative Catholic party still showed the largest following.

One of their number, Dr. Reuter, a Luxemburg lawyer, became minister of state. Born in 1874 and one of the four youngest deputies, he represented Luxemburg country and Wiltz in the chamber. He is of a naturally conservative temperament, yet of a nature to prefer a middle course rather than reactionary conservatism. Upon his shoulders fell the burden of meeting confused conditions following the armistice.

The new chamber of 1918 was divided as follows: Catholics, 23; Liberals, 8; Socialists, 12; Independents, 5; Democrats, 5.[3] It was an important body, for it was to reform the constitution, and there were those among the deputies who demanded far greater reforms than mere amendments to the old fundamental law. Europe was turning republican, and the party of the Left declared that there was no reason to retain any dynasty at all, let alone one whose chief had been very friendly with the now despised Germans. There were grumblings during November, 1918, but they came to nothing, calmed by the presence of new allied troops. Marie Adelaide stood with General Pershing to review the incoming Americans in a most friendly manner; but there were intimations that American officers had better not be too willing to receive favors from the court party if they wished

[3] The figures are taken from *La Patrie Luxemburg*, Paris, Aug. 15, 1918.

to please their French allies; and M. Pichon intimated very plainly that the grand duchess was *persona non grata* to the French government. Two or three times the rising discontent was smoothed down. On December 13, the chamber requested the sovereign to abstain from any executive act. The motion was carried 35 to 2. A few days more and a fresh crisis came. On January 9, 1919, there was a mutiny of the troops—the small force of volunteers charged with policing the land—while vehement cries were heard that a republic must be proclaimed and the dynasty abolished once for all.[4] The movement was characterized by the various features of greater revolutions, but it was all on so small a scale as to be almost theatrical.

The Catholic party realized that there was no possibility of retaining Marie Adelaide in the face of the determined demand for her removal; but they did succeed in saving the dynasty,

[4] There were many broadsides issued by the various groups, each proclaiming itself the real type of patriot, able to save the country. The following was addressed to the people in the north by two deputies who had recently separated themselves from the Catholic party:

Appeal to the people of the Oesling

"Our volunteers have mutinied and ranged themselves in the service of the Revolution. Decorated with red emblems they march through the city, stir up the population and attempt to occupy the public buildings. Yesterday afternoon they seized the issue of *Luxemburg Wort* at the station and burned it all in public places. We learn from reliable sources that the *Clerfer Zeitung* is to suffer the same fate.

"Our army does not consist of the entire armed population as is the case in other lands, but of 150 twenty-year old youths who have volunteered in the hope of getting good public positions later.

"Oeslingers!

"Will you let these 150 green boys suppress and rob you of your civil rights? Under no condition! We must meet force with force! Chase these rebels in uniform out of your frontier villages. Take away their uniforms and arms, for they are misusing them to rob peaceful citizens of their rights and to drag the state into misfortune! Farmers, workmen, and citizens of the Oesling be ready to hasten to the capital at the first call and help law and order prevail. Meanwhile organize in your villages and suffer no fire brand in your ranks. Down with the red Revolution at whose head stands Michel Welter, Oesling's foe. Long live Luxemburg, free and independent!"

TH. BOEVER. P. PRUM.

January 9. "Independent Oesling Deputies."

although when the chairman, Altwies, followed by the whole party of the Right, marched out of the chamber, it looked for a space as though the grand duchy had received its death blow. Emile Mark, a Socialist, organized the remaining deputies as a kind of rump parliament, and actually proclaimed the republic. It had an existence of only half a day. Altwies regained control, proclaimed the abdication of the grand duchess, announced the automatic succession of her sister, Charlotte, according to the constitutional regulation of the succession, dispatched a committee to the chateau of Colmar Berg to receive her oath (January 15), and the immediate crisis was past. The precise story of the events of the days, January 8–15, with all the influences that worked openly or in secret, is not yet told. This much is plain. True to her past history, Luxemburg's ingrained conservatism predominated partially. The old order held its own momentarily but it yielded to the idea of a referendum as arbiter of its maintenance—itself a novel measure.

The revision of the constitution began in January, 1919, proceeded throughout the winter and spring, both radicals and conservatives obtaining certain victories. Article 32 related to the seat of state sovereignty and was the first to be altered. "The grand duke exercises the sovereign power conformably to the present constitution and the laws of the land," was replaced by: "The sovereign power resides in the nation. The grand duke exercises it conformably to the present constitution and to the laws of the land. He has no other powers than those formally attributed to him by virtue of the constitution itself, all without prejudice to Article 3 of the present constitution." This article 3 provided definitely for the succession and for Nassau family rights. Thus so much was gained to the advantage of the dynasty.

Article 37 gave the grand duke power to make war and treaties, giving such information to the chamber as the safety of the state permitted. The revised article 13 reads: "The grand duke commands the armed force. He makes the treaties. No treaty is effective without the assent of the chamber. Secret treaties are abolished. No cession, no exchange, no addition of territory can take place except by virtue of a law."

Article 52 on the suffrage was radically changed. As amended it reads: "The deputies are elected on the basis of universal and simple suffrage by ballot, according to the rules of proportional representation, conforming to the principle of the smallest electoral quotient and to regulations to be determined by law."

"The country is divided into four electoral districts. South—Esch, Capellen; Centre—Luxemburg city, country and Mersch; North—Diekirch, Redange, Wiltz, Clervaux and Vianden; East—Grevenmacher, Remich and Echternach.

To be an elector it is necessary:

1. To be a Luxembourgeois or Luxembourgeoise.
2. To enjoy civil and political rights.
3. To be 21 years old. [Twenty-five had been the age limit for tax paying males.]
4. To be resident in the grand duchy.

"To these four qualifications must be added those determined by law. No condition of tax payment can be required. To be eligible as deputy one must be 25 years of age, and in addition possess the three other qualifications.

"The electors shall be called upon to declare their preferences by way of the referendum in the case and under the conditions to be determined by law."

Deputies living in the capital have had no compensation. Those from a distance received first five, and since 1898, ten francs a day for each day of presence. Article 75 as amended reads: "Members of the chamber of deputies shall enjoy an indemnity of not more than 4000 francs per annum. They shall also have a right to indemnity for displacement. Details relative to this double indemnity shall be regulated by law which shall be retroactive for the session of the constituent assembly."

These four articles—32, 37, 52, and 75—duly ratified by the council of state and endorsed by the young sovereign, were published on May 16, 1919 and became law.

Since that time practically every adult in the land, considered as true Luxemburger, has been called upon to express an opinion on the composition of the legislature. According to the election law a notice is sent to all voters by a town official. They are

thus saved the duty of registration and have their legal ballot in hand when they go to the appointed polls. More than that, a fine is incurred for failure to vote, except in case of a referendum, where balloting is optional.

Coincidently with their efforts to set their house in order, the deputies watched the Paris peace proceedings most anxiously. Meantime, the powers failed to endorse Luxemburg's change of rulers, and Charlotte remained simply an acting (under orders) but unrecognized ruler, Belgium alone sending a diplomatic envoy to her capital. The grand ducal attitude, however, had begun to be *Timeo Danaos et dona ferentes.*

Might not republican France, unable to assimilate a grand duchy, be a safer associate in the customs union? In order to obtain a fair statement of terms and to show the real position of the people, it was decided to hold the proposed referendum on May 4. At that moment, there might still have been a majority for Belgium, in spite of waning sympathy. But an intimation came from Paris that the moment was not counted favorable for a plebiscite of any kind. Dr. Reuter yielded the point and the election was postponed, to the special annoyance of the opposition.

About a week later a portion of the preliminary draft of the Peace Treaty appeared in the papers. This was the first view obtained by Luxemburgers of Articles 40, 41, and 268, of the Treaty of Versailles, all of which had to do with the severance of the grand duchy from German control. A Socialist deputy, Joseph Thorn, seized the occasion to attack the government with considerable asperity. He read the articles aloud, and then proceeded to declare that if these had been adopted without a hearing being given to the Luxemburg government it was a proof of the latter's complete incapacity. If the minister of state had been informed and had failed to take the public into his confidence, the proof of incapacity was still plainer.

Applause came from the Left and protests from the Right. Thorn continued: "If the government obtained a hearing and refused to make an explanation, it is a behavior which I have not hard enough words to characterize."

The colloquy that ensued between Dr. Reuter and his critic showed the minister in a difficult position. It may be inferred that he had not been fully warned of the proceedings, and his statement that all neutral lands were in the same box simply produced a storm of protest. Thorn continued: "We are forced to ask whether we have any representative in Paris or Brussels. Did they think you were not in the running, or did they consider us simply as *quantité negligeable?*"

Dr. Reuter: "I repeat. All the neutral lands were in the same case?"

Thorn proceeded to declare that Switzerland would never have been treated in this cavalier fashion, and that he was justified in informing people that their representatives in Paris did not know what was going on, and that the Entente had never shown them the complete text of a treaty important to their land in the highest degree. "The question now is whether our representatives are in a position to furnish an explanation."

Reuter: "A few days time must be given."

Brasseur: "It should have been done long ago."

Joseph Thorn: "To like right there is like duty. I cannot understand why Luxemburg should renounce her neutrality and why anyone in Paris should meddle with this change of our status. As far as I am informed, Switzerland is negotiating her neutrality with France. We are negotiating with no one. No one addresses a word to us, and that is the reproach I make to the government and on this ground I call it incapable to direct the economic and political future of the land and to bring it into a safe port." (Violent protests from the Right.) Thorn proceeded further to declare that they could not talk of their independence when their customs union was discussed at Versailles.

Reuter: "In Paris they insist on the abolition of our customs union with Germany but it is at our instigation."

J. Thorn: "That is a matter that only concerns us. What business is it of the Peace Conference whether we quit or maintain our customs union with Germany? (Interruption.) While they are discussing the fate of this land at Versailles you have the

face to come to us with the statement that you have nothing to tell us. In my opinion you are, under these circumstances, incapable of saving the future of this land and we refuse to give you the confidence you ask for."

Reuter: "If you did not have this pretext you would find another."

J. Thorn: "You are leading the land to ruin."

Reuter: "And you would lead it to bolshevism if you had the power as you recently declared in a meeting at Esch."

J. Thorn: "To socialism I said."

Reuter: "No to bolshevism. In a public meeting at Esch you allowed a speaker to talk about the entry of bolshevism into our land and you said you were ready to receive it with open arms."

J. Thorn: "I never said so."

Reuter: "You said so."

J. Thorn: "I deny that formally. I never declared myself for bolshevism. (Violent interruptions.) In Moscow at least they respect some rights, in Versailles none."

Reuter: "Declare war (interruption)."

Thorn was finally silenced, but Brasseur, leader of the less radical Liberal party, proceeded in much the same vein:

"I am convinced that our government, in the most crucial hours, has nothing to communicate while news of the greatest importance to us is going the rounds of the foreign press. We have a government on our hands that is not in a position to inform the public of the most weighty things."

Schiltz: "Would you be any more so if you sat on the government bench?"

Brasseur: "If I were in your place I would certainly not serve the dynasty which at the present is directing the fate of the land." ("Very good"—Left. Protests—Right.)

Reuter: "The people are masters of their own fate. Give them the word through the referendum."

The request to postpone the election arranged for May 4 struck the deputies, according to M. Huss like a "bolt from heaven." There was an increasing sensitiveness in regard to any interference in grand ducal concerns. M. Huss, conservative

Catholic leader, took occasion to answer an American's suggestion written in 1918, that Belgium was the neighbor with whom the grand duchy should naturally affiliate, owing to the long historic connection between Luxemburg and the Belgic provinces. He declared that no foreigner could understand their needs, that the situation was new and must be settled entirely as a question of the present. Every one had sympathy with Belgium in her misfortune at the outbreak of the war and undoubtedly she had been disappointed at the result of the Peace Conference. But that was no reason why Luxemburg should be sacrificed to her as a compensation. "If we have lost sympathy with Belgium it is on account of an unskillful propaganda. Every one knows that a considerable part of the agricultural population of the land was in sympathy with their Belgian brothers who had suffered so keenly. Dr. Hoffman was offered thanks by King Albert for his efforts in their behalf. But since our brief meeting with the Belgian deputies, the fear of Belgium has increased instead of diminishing. The referendum ought to be held as soon as possible."

The debates during the summer of 1919 showed that the popular trend grew more and more anti-Belgium. Personal feeling ran high. In the chamber there were accusations of unfair dealing. On July 17, for example, Hoffman, a Catholic member from Redange, complained that important legislation was frequently carried through after 5:30 p.m. when the out-of-town deputies had left by the last train. "We are not professional politicians. We have our own work at home and must perform it. Advocates can pursue their calling here in Luxemburg. We cannot. Why should we not begin promptly at 3 p.m.?" He also suggested that all ballots taken after half past five should be annulled as not giving a just return of the chamber's sentiments. In the course of his remarks he intimated that politics played a large part in the hour at which a vote was taken. Chairman Altwies reprimanded him with: "You ought not to cast aspersions on the intentions of your colleagues;" and there were various angry declaimers of the slightest intention to be unfair.

Schaack (a deputy who was not a candidate in 1919): "M. Hoffman asserts that we are here for our constituents. No, we represent the land—not our constituents." (The remark betrays the fact that the ancient idea that the legislators were delegates appeared occasionally.)

Hoffman: "That is understood of itself. The voters are the land."

Hemmer: "It should be decided not to take any vote after 5:15 p.m., so that every one can go home."

Diderich (Radical): "The system of voting after 5:15 was inaugurated by the party of the Right to pass motions that they thought pressing. In this manner were carried the accession of the grand duchess Charlotte, the referendum and the election law. The party of the Right demanded the vote on these motions after 5:15, and now they are complaining about the very system they inaugurated."

Hoffman: "The chamber made the decision."

President Altwies: "As president, I assert that the decision not to take a vote after 5:15 p.m. was not a party move but was at the request of the deputies who had to take the northern train in order to get home, and the chamber approved. No party was to blame for it. Last week we voted daily up to six o'clock, but the motion not to vote after 5:15 was passed in the interest of the deputies."

Kieffer: "If we met at 2 p.m. we could rise at 5."

President Altwies: "That was suggested, but the Esch deputies said they could not get here at 2."

Many voices: "That is not true."

It was finally decided that the roll should be called at 3:10 precisely. But punctuality seemed difficult of attainment. In September, 1919, day after day the writer often waited in the visitors' gallery until nearly four o'clock before the session opened.

The discussions in July and August were directed mainly to details of the budget and the workmen's indemnity. The surplus as existing in 1913 had changed into a large and growing deficit. An optimistic note is apparent in the statements made by the minister of finance, Neyens, while the magnitude of his

figures caused deep apprehension in the hearts of many of his hearers. Minister Neyens said rather jauntily that Laval had rated the national wealth at 3,650,000,000 francs in 1916, making the per capita quota 14,000 francs. A loan of 75,000,000 would tax each at 300 francs, "which with the individual wealth of 14,000 is not disquieting."

De Villers (Right) objected that the property cited was imaginary and not realizable, and another deputy declared that a cry of horror rang through the land when the finance minister with shameless frankness announced that they came out of the war with a deficit of 145 millions. Neyens corrected his figures to 105, but the speaker proceeded to doubt whether 180 million would spell the whole debt.

Certain deputies urged: "We must look to it that we do not leave all our debts to the next generation." To the assurance that posterity could properly bear its share of the world war came the question: "How do we know that they will not have their own war problem to grapple with? There may be a worse war in twenty years. It would be terrible if they had to bear their burden and ours too. If you examine the articles of peace you will find that they are articles of war."

Reproaches about the debt brought out the statement that they were simply in the same case as all neutral lands. It was the war. Holland raised four or five loans, Switzerland eight or nine. At various stages in the debate suggestions were not wanting that many Luxemburgers had grossly profiteered during the hostilities, and that it was they who should be heavily taxed. "Any one can point out many a man who hardly had a decent hat on his head before the war and now had a fine villa over that same head." ("True"—from several benches.)

Krieps (Socialist) remarked that the constitutional assembly of 1919 would be entered in the annals with a black mark for its financial muddle. "Politics are at the bottom of everything and if a change does not come at the next election the land will plunge headlong to ruin." (Approval from several benches.)

Nevertheless, in spite of financial complications, the government proceeded to accept fresh expenditures, assuming responsi-

bility for the difficulties that individuals found in meeting the high cost of living. A special credit of 15,000,000 francs was voted to provide a bonus to every workman in the land. Discussion was hot and verbose. On August 12, one deputy, Lacroix, said: "For my part I consider it my duty to oppose the motion, for it is unjust, anti-social and menacing to the public finances. What is public opinion on the subject? Let us be open. I am not talking of my personal judgment. I express the opinion of many electors, highly respectable people. They say that, at the moment when we are appealing to new voters and proposing a referendum that has two sides, political and economic, this bill is a mere political election maneuver which will cost the land large sums if passed. That is what the public thinks."

Prüm, an Independent, approved these sentiments, but the Socialist Diderich objected to blocking the measure by the fear of electioneering. Social solidarity demanded some benefit for the war sufferers. "The state was sometimes forced to act. When the state had changed the depreciated German notes for Luxemburg treasury bills, worth double, a royal gift was bestowed on every one who had saved German money during the war,—the large farmers and merchants. That benefit accrued to the well-to-do people even though their profit was not invariably just. The laboring class had no share in this. It is therefore natural and just that the state should now come to the aid of the poor and, under another form, give them an advantage which it had already adjudged to those who had, under the state's leniency, enriched themselves at the cost of small folk. The universal high cost of living presses hardest on that class for whom the bonus is intended." He added incidentally that the whole situation was due to the utter imbecility of the government. (Laughter on the Left.)

Gen. Director Liesch: "It is laughable."

Diderich: "You find everything laughable and you do nothing but laugh."

Liesch: "Sometimes one laughs to avoid tears. Then I have to laugh at your arrogant self-conceit."

Diderich: "It does not equal yours which is unbounded."

Diderich rambled on at length in justification of his vote for the bonus and was warmly approved by the Left. He was followed by Liesch who replied to his assertion that the government showed a lack of energy.

Gall: "But it is true."

Probst: "He has the right to say so even if he is wrong."

Liesch: "And I have the right to protest."

Probst: "Certainly even if you were wrong." (Merriment.)

Liesch: "No, then I would not protest."

Probst: "We shall come to asking the government's permission to open our lips next."

Diderich: "Yes and submit our speeches for approval."

President Altwies: "At least allow the government to utter its opinion."

Thus the discussion dragged on, punctuated by warmth and acrimony, and was still in progress on August 13, when a large body of workmen—the number was variously estimated from four to twenty thousand—made their way from Esch and surrounded the chamber of deputies demanding the passage of the act that had been favorably reported by committee. Socialist deputies went back and forth between their colleagues and the crowd, whose unruly proceedings alienated many of their sympathizers. The ultimate passing of the bill was pledged; but even that was not sufficient to calm the passion of the crowd. Stones were flung wildly, smashing over eighty windows in the chamber, and the deputies ran to shelter. Again, however, the menacing danger of revolution was averted. The chamber adjourned to September, and on August 14, the Feast of the Assumption of the Virgin, the only visible work in progress in the capital was that of the glaziers repairing the windows of the chamber of deputies!

The final passage of the act was on September 10; it was signed two days later by the council of state, and by the grand duchess on the 20th. The beneficiaries are industrial and agricultural workmen, domestic servants, artisans working for themselves if they do not have more than one apprentice, injured

persons on half time, widows, and orphans under fourteen, of persons who would have been entitled to the bonus. It was necessary to prove nationality or ten years uninterrupted residence in the land, wages of less than 6000 francs, for the year 1918, and 165 days of work, days of illness counted as work days, between January 1 and October 1, 1919. The sum allotted was from 250 to 400 francs each.

The next subject for the consideration of the chamber was the long talked of referendum; and the sessions of the last full week in September were occupied with discussion of governmental policy and questions pertaining to economic relations. Many points, already freely threshed out, were fought over anew. Dr. Reuter was again called upon to justify the subordination of the government to the conference at Paris, but it was evident that the rampant revolutionary spirit of midwinter had calmed down. To be sure a sneer was audible from the Socialists when the Liberal, Brasseur, reproved the minister of state for permitting the powers to ignore Charlotte during her nine months of *de facto* sovereignty. He was reminded without over civility, that he had not always been so tender of the dynasty. It was intimated, moreover, that he had used the word *Bôche* concerning the sovereign, an assertion denied indignantly amid some confusion of tongues.

But in reality, long before the election day, there was little doubt about the retention of the dynasty. Straw votes taken in organizations of various types had showed, moreover, a preponderating sentiment in favor of economic affiliation with France rather than with Belgium and this vote was to be advisory only, not decisive. Farmers were especially emphatic, as to their desires. From France, they wanted fertilizers and protection; from Belgium they feared competition and an influx of Argentine wheat through the free trade Belgian ports. Yet, a wish for affiliation with French customs was less emphatically asserted than the determination to retain the dynasty and Charlotte. There were several thousand less votes cast for the former question than for the latter. Out of 127,775 on the register,

over ninety thousand voters came to the polls.[5] The Socialists had proposed to refrain from voting, but there was a split in the party on that point. One woman, asked by the writer if she had voted, replied that she could not because her husband was a Belgian, but added: "I would not, anyway, it was all a mere *plaisanterie*." She refused any further explanation of the statement.

The government had, however, been so well supported in upholding the dynasty that it was freer in its action. The acceptance of the young duchess led to the display of her portrait everywhere as a symbol of her acknowledged sovereignty. Moreover, the backing given to his policy decided Dr. Reuter to hasten the renewal of the chamber, inevitable in any case within a brief time, and a general election was appointed for October 26.

Six sessions of the old chamber were held between October 3 and 17. Possibly it was mere chance that the discussions turned on topics peculiarly interesting to large classes of voters, new and old. Nor was the referendum finished with its apparent settlement. Certain deputies were aghast at the confident reports printed in the French press, and implored Dr. Reuter to explain that popular preference alone had been tested in the ballot box. The minister replied that journalistic inaccuracy was not his concern, and that any further explanation would be an insult to the intelligence of the Peace Conference and to the chancelleries of France and Belgium, who perfectly comprehended the true character of the election. Especially long were the discussions on the disposition to be made of the railways, and the fervid espousal of employees' rights ended in a motion that

[5] The vote on the internal government was as follows:

For retention of the Grand Duchess Charlotte	66,811
For retention of the dynasty with another grand duchess	1,286
For introduction of another dynasty	889
For a republican régime	16,885
Blank and invalid ballots	5,113

On the question of economic union:

Union with France	60,135
Union with Belgium	22,242
Blank and invalid ballots	8,607

a committee of them should be consulted. It was defeated, 22 to 20. A proposed rise in teachers' salaries evoked flowery harangues on the simple justice of adequate recompense for moulding the young minds of the nation and of equal pay for men and women. The comparative cost of living in town and country, even to the items of keeping a cow and the cost of female head gear, were wrangled over, as well as the justification for half rates to the Catholic sisters with their restricted desires for mundane things. Little final action was taken on any subject before October 26, when the constituent assembly ended its stormy life amid cries of "*Vive la grand duchesse*" on the Right and "*Vive la république*" on the Left. There were more voices in the former, but the latter cry had the last word.

The result of the election proved that extension of suffrage had actually reinforced the conservative party, and the fresh strength given to the prime minister was immediately available, in the session opened on November 4. The returns from the trial of proportional party representation by the *scrutin de liste* were as follows: The Right (conservative Catholics), 27; Socialists, 9; Liberals, 7; Independent nationalists, 3; Free peoples' party, 2. After the publication of the above figures there were some corrections, but a conservative majority remained assured as the reapportionment had substituted 48 for the 53 seats of the previous session.

As soon as the routine of reorganization was completed, with the former president, Altwies, again in the chair, Dr. Reuter opened formal business by announcing that the marriage of the grand duchess to Prince Felix of Bourbon Parma was to be celebrated on November 6. Derision was heard from the Left at his phrase, "The country is delighted at the news and shares in the happiness of the grand ducal family;" but this did not deter him from proceeding to request a special act of naturalization for the bridegroom and thereby evoking a storm of criticism more definite than laughter.

The Liberal, Brasseur, complained that if time had been allowed for a proper consideration, "the grand duchess and her fiancé would have been spared the painful discussion of today.

If it be known abroad how easily the Luxemburg chamber can turn an Austrian into a Luxemburger, I fancy that there will be much amusement." The speaker objected especially to the lack of all usual documents, and to the eleventh hour application.

There were many grades of opinion. A committee was appointed to report at once on the matter—a proceeding that had difficulties, as an added charge to prepare an address to the bride caused an immediate resignation of one member and the substitution of another. The objection that the prince fought in the Austrian ranks was answered by the assertion that the president of the French republic himself had received him and that there would be no international complication on that account. Blum, a reëlected Socialist, took the stand that in all countries where a female sovereign was legal, there were special restrictions on her marriage, and that the only reason why they did not exist in the laws of the grand duchy was that female succession had never been contemplated until the abolition of the Salic law in 1907, simultaneously with which regulations about the matrimonial alliance of any grand duchess should have been made, but were not. Told by August Thorn that he was medieval, Blum replied that, on the contrary, he was completely up to date, and international difficulties might soon loom large on the horizon to prove it. Besides, all that they knew of a complaisant French attitude towards Prince Felix was hearsay. The chamber had asked for definite information and had been refused. The Socialist, Joseph Thorn, gave a long harangue on the evil principle of hereditary sovereignty. He was quite willing that Charlotte should wed the man of her choice, but he was not willing to permit the marriage to be an occasion for overriding naturalization laws. He was an internationalist himself, but special legislation was abhorrent to him. "*Vive la république*" made itself heard several times in the course of the debate. Blum and Mme. Thomas, the woman deputy, and three other Socialists moved to suspend the project of the prince's naturalization until the powers had renewed diplomatic relations and to submit that same naturalization to a referendum. Both motions were lost. The committee reported favorably and the measure was

carried 25 to 21. A second reading dispensed with, the bill instantly became law, and Prince Felix was a Luxemburger when he was married to the grand duchess on November 6. That France was not inclined to object was shown by the fact that when President Poincaré visited Thionville in February, 1920, to decorate the city with the legion of honor, the young pair crossed the frontier to greet him and toasts offered at the banquet were eloquent with Franco-Luxemburg amity.

The chamber became immediately absorbed in domestic concerns. Could the gratuitous distribution of the daily reports of the proceedings, the *Kammerberichte* or *les comptes-rendus*, be continued in the face of the price of paper and the increase of the recipients to 130,000? A proposal to give one copy to each household was the signal for dissertations on the rights of servants and on the educational value of the reports. "On the morrow of the bestowal of universal suffrage the suppression of free information on governmental action is a crime," declared Brasseur, who was warmly supported by some, while others jeered at the idea of their utterances being "educational" to any public. Others urged that the reports were simply used for wrapping paper, and again others maintained that the newspapers were all partisan and that the reports alone gave the literal truth of the transactions. The recommendation of a two franc subscription was carried, however, in the face of the clamorous defense of popular rights, and a protest against "candle paring economies."

A more important question, already fought over meticulously during the preceding year, was the transfer of certain industrial corporations from German to allied stock holders. They had been, it was asserted, dangerous, forming "a state within the state." In settling the purchases many and various were the complications involved; indemnity to the grand duchy for the injury caused by the presence of German property on Luxemburg soil; a just price in the face of fluctuating exchange; the protection of the employees, etc. It was the last named that afforded some of the newly elected labor Socialists themes for their speeches: "We are the Labor party, you are its betrayers."

"Is that any assurance for the workman?" "You are defending the dictatorship of capital." "Capital has become so powerful that not merely the proletariat will be at its mercy, but entire populations as is already the case in this country today." "Only the suppression of the capitalist régime where interest rules and its replacement by another social order where the collective interest is sovereign, will disembarrass humanity from the injustice prevailing today." "As soon as capital is at stake, the bourgeois element is solid." These were among the darts hurled at the supporters of the terms proposed by minister Neyens, as acceptable for the sale of the most important industrial plants.

In connection with the sale the workmen were allowed to state their own demands, a list of eleven. They were: (1) recognition of their unions, (2) sanitary improvements, (3) weekly payments, (4) 100 per cent increase for over time work, (5) vacations, (6) apprenticeship as before, (7) revision of salaries, (8) equal pay for men and women, (9) advancement of workmen to higher positions, (10) no reduction in numbers or in wages during a crisis, (11) a forty-eight hour week. Minister Neyens reported that these had been submitted to the purchaser who had replied that certain of the points should be studied carefully, 4 and 10 could not be considered, and the others were granted rather doubtfully.

"There you see what we get," declared Krier, "nothing at all."

In his final summary of the negotiations, Neyens defended his course in detail, being especially emphatic in his denial of the charge of graft. Something had to be concluded before November 15, or the men would have been cast adrift; he had done his best. The sale was accepted, 27 to 12, four deputies abstaining from taking any part in a transaction which they disapproved.

A month later Joseph Thorn declared:

"We have no trust in the administration, and the late events in the chamber strengthens us in the conviction. From the sale of Gelsenkirch and Differdingen, we can see that the government

is not informed about what goes on in the world. It has no knowledge of the wishes of the laboring classes which tomorrow will be the orders. Further the government rests on an artificial majority of the population behind it. Trusting in this deceptive majority, the government pursues reactionary methods."

Yet in the face of all this bitter opposition, the same government remains in power. The excerpts given show what the trend of the debates has been as well as the subjects discussed. The grand duchy does not worry about a navy, but with that exception nearly every trouble harassing other countries stares her in the face while she suffers from some anxieties peculiar to herself. "Fifteen months since the armistice and no economic alliance concluded yet," was a reproach forced upon Dr. Reuter's ears with tedious repetition, the number of months only being changed. He was told that he might as well admit that his referendum policy was useless. "You (Dr. Reuter) played a dangerous game. You staked all on one card through the referendum and you are not yet sure whether it were a trump!" In March a special deputation went from the chamber to Paris for an interparliamentary conference, and the cordial reception of the Luxemburgers added a new stone to the proposed alliance, while Belgium's participation as a third party does not seem as impossible as it did. Meanwhile, the state of the grand ducal finances has become very involved, and the latest reports, received June 1920, are filled with an exhaustive statement of their conditions and a proposed solution.

Recently the number of cabinet members has been increased to six, with a different distribution of duties. Two ministers have been appointed as *chargés d'affaires* at London and Washington.

In the midst of republican Europe the strange spectacle is presented of two women, one Catholic, one Protestant, sprung from the ancient Nassau family, almost the last of the race, held in hereditary sovereignty by compromises, by a policy much like the mediating course used by the great Nassau, William the Silent in the sixteenth century. He was too far ahead of

his age to be successful. Under the aegis of his "*Je maintiendrai,*" Queen Wilhelmina retains her seat on the throne of Holland,—teeming though the land is with advanced ideas. Grand Duchess Charlotte, with the same family devise, retains her semblance of sovereignty in Luxemburg simply because she is the most available symbol for fulfilling the people's wish to "remain what we are." "*Mir welle bleiwe wat mir sin,*" is still the cry.[6]

[6] In addition to the official reports of the chamber of deputies the authorities used are: Eyschen, Paul. *Das staatsrecht des grossherzogthums Luxemburg,* Tübingen. 1917; Ruppert, P. *Code politique et administrative du grand-duché de Luxembourg.* 1907; Fruin, Robert, *De zeventien provincien en haar vertegenwoordigin in de staten-generaal.* 1903.

CONSTITUTIONAL LAW IN 1919–1920. I

THE CONSTITUTIONAL DECISIONS OF THE SUPREME COURT OF THE UNITED STATES IN THE OCTOBER TERM, 1919

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The work of the Supreme Court during the term concluded last June was quite unusual both in the nature of the problems involved and the importance of certain of the results achieved. The center of interest in constitutional interpretation has swung, for the time being at least, decidedly from questions of state power to those of national power. This is partly the aftermath of the war, partly the corollary of recent amendments to the Constitution. By the same sign, the court has been confronted in recent months with not a few problems of considerable novelty—some indeed being questions of first impression—with the result that it has been called upon to enunciate principles which must guide its interpretation of important provisions of the Constitution for years to come. In preparing this review, the unique quality of the court's work during the period under consideration ought to determine the procedure. Accordingly the greater part of the space is devoted to a few outstanding cases, all of which involve questions of national power, while less striking results have received much briefer consideration, often only cursory mention.

A. QUESTIONS OF NATIONAL POWER

I. INCOME TAXATION

1. The Stock Dividend Decision

What is "income" within the meaning of the Sixteenth Amendment?[1]

[1] "The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."

By article 1, section 9, of the Constitution, "No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken." It was held in Pollock v. Farmers Loan and Trust Co., 158 U. S. 601, that a general tax on incomes derived from property amounted to a

The question may take many forms. In Eisner v. Macomber[2] it was as follows: Is a dividend paid in additional stock of the issuing company, which is distributed *pro rata* among the stockholders, taxable as income of such stockholders? A majority of the court, speaking through Justice Pitney, answered no, and in so doing set aside a part of the Income Tax Act of 1916, and by force of *stare decisis* a part of the present act.[3]

"direct tax." The Sixteenth Amendment was designed to overcome the effect of this decision, but leaves the general provision respecting "direct taxes" standing. Whether income taxes are now to be regarded as "indirect" seems to be still a moot question. Compare Justice Pitney's opinion in the instant case with the Chief Justice's opinion in Brushaber v. Union P. R. Co. 240 U. S. 1.

[2] 252 U. S. The case was decided, after reargument, March 8, Justices Day, Holmes, and Brandeis, of whom the two latter prepared opinions, dissenting.

[3] A clearer comprehension of the issue between the majority and minority of the court in this case will perhaps be aided by conceiving the following set of facts: The X W Z corporation, chartered under the laws of state M, is capitalized at one million dollars. A buys one hundred shares of stock at par, which is $100. Later the company accumulates a surplus of $200,000, with the result that A's stock is now worth $120 per share. At this moment the directors take up the question of what should be done with the surplus, and five possible courses are found to be open: 1. The surplus, which is at present held, let us suppose, in stock of the A B C corporation, may be liquidated and paid in cash to the stockholders of the X Y Z corporation. By Lynch v. Hornby (247 U. S. 339), A's share of the dividend, though extraordinary in amount and based upon earnings, or even upon increase in the value of the corporation assets, which accrued before the Sixteenth Amendment was added to the Constitution, is taxable income under the amendment. 2. Or the surplus may be paid in the stock held in the A B C company, in which case A's share of it is, by Peabody v. Eisner (247 U. S. 347), still taxable as income, under the same conditions as before. 3. Or the directors may decide that it is desirable to increase the capital assets of the company to the amount of the surplus, and with that end in view, they may arrange for an increase of stock to the amount of $200,000, to be offered to the stockholders *pro rata* at par at the same time that the cash dividend is paid as under "1." In this case too, it appears, A would be taxed on his share of the dividend whether he availed himself of the option to subscribe for his *pro rata* of the new stock or not (see J. Brandeis' dissenting opinion in Eisner v. Macomber). 4. Or the directors might decide to transfer the surplus directly to the capital account of the company and vote no dividend at all. In this case A's share of the benefit would still appear in the fact that his original stock stood at a premium, but probably would be taxable as income only if he sold this stock and then only to the extent that the proceeds of the sale represented a profit accruing to him—not the company—since 1913, the date when the Sixteenth Amendment was added to the Constitution (see Justice Pitney's opinion in Eisner v. Macomber). 5. Or finally, the directors might decide to transfer the surplus to the capital account of the company by issuing $200,000 worth of new

Justice Pitney's argument runs, in substance, as follows: In the first place, he points out the obvious fact that the stockholder is not enriched by the new stock since this has absorbed the premium on his original holding; instead, for instance, of owning 1000 shares valued at $120 each, he now owns 1200 shares valued at $100 each. But that this fact is immaterial to the case is shown by the equally obvious fact that the same effect would result from a cash dividend of like size. Before the payment of the dividend, the owner's stock would be worth $120 a share; after it, it would be worth only $100, but the difference would be in his pocket, and taxable, the cases show, as income. In the latter case, in other words, Congress is permitted to take account of the fact that the stockholder has been enriched in consequence of the earnings of his company, while in the former case, by the decision under review, it is not permitted to do so.

In the second place, Justice Pitney makes much of the fact that a stockholder's share of a stock dividend is necessary to entitle him to his original participation in the control of the company and in future dividends. Suppose, he says, the shareholder has not the wherewithal to pay an income tax upon his dividend stock; then, of course, he would have to sell some of this stock, and with it a proportionate share of his voting power in the corporation. "Nothing," Justice Pitney continues, "could more clearly show that to tax a stock dividend is to tax a capital increase, and not income, than this demonstration that in the nature of things it requires conversion of capital in order to pay the tax." But the very question at issue is whether a stock dividend is capital or income. Grant, however, that it is capital, because it carries with it "a right preservative of rights" in the control of the corporation, still the question arises, how did the stockholder come into possession of it? The answer is obvious: It was bought for him by his duly authorized agent, the corporation, out of funds earned by that agent for his benefit, which benefit is now returned to him in the form of the same relative control indeed, but over a larger capital investment.

In the third place, Justice Pitney points out that a stock dividend takes nothing from the property of the corporation. But the answer again is clear. The very purpose of a stock dividend is to add to the property of the corporation, that is to say, its fixed capital. What was

stock against it, the new shares to be distributed among the stockholders *pro rata*. A's share of the distribution would be 200 shares, representing a value of $20,000; and by Macomber v. Eisner would not be taxable as income under the Sixteenth Amendment, that is, without apportionment.

a fund out of which cash dividends might have been paid, is now transferred permanently to the active assets of the company. The original question, therefore, still remains. What was the source of this fund; and also, what was the nature of the transaction by which it was added to the corporation's permanent capital? Obviously the fund came from the earnings of the corporation, that is of the stockholders acting through a corporate agent, and its permanent transference to capital account was a further investment effected by the stockholders through the same agency, in the business thus conducted.

But this point is worth scrutinizing a little further, since it embodies an idea which underlies Justice Pitney's entire argument. This is that the corporate surplus against which a stock dividend is issued is, as to stockholders, capital even before the dividend is issued, that indeed the issuance of the dividend is "merely bookkeeping." It must of course be conceded to Justice Pitney that, by the law ordinarily governing corporations, no stockholder has "a right to any particular portion of the assets" of the corporation "unless or until the directors conclude that dividends shall be made and a part of the company's assets segregated from the common fund for the purpose." Nevertheless, we are also confronted with the palpable fact that where a corporate surplus has accumulated, the stock-holder has been thereby enriched. The question accordingly arises, why may not Congress, penetrating the corporate veil, proceed to treat the stockholder's interest in an undistributed corporate surplus as income, and so taxable under the Sixteenth Amendment?

Justice Pitney bases his answer to this question on his reading of the words "incomes from whatever source derived" of the amendment itself. These, he contends, set forth "a fundamental conception" of income as something "severed from capital." And from this it follows, he urges, that "we must treat the corporation as a substantial entity distinct from the stockholders," and that in fact, "it is only by recognizing such separateness that any dividend—even one paid in money or property—can be regarded as income of the stockholder."

The argument seems far-fetched, to say the least. If we regard the history of the Sixteenth Amendment, all that the words which Justice Pitney so much labors signify is that Congress may tax without resort to the rule of apportionment all incomes however produced—that and nothing more. Yet without this aid from the amendment, what becomes of Justice Pitney's apotheosis of the corporate entity? That the power of Congress may not be obstructed by the corporate entity

or any of its attributes from reaching what is, but for the corporation's intervention, stockholders' income, must follow from fundamental principles. The corporate entity is not the offspring of the Constitution, nor is it adopted by the Sixteenth Amendment; it is the creature exclusively of statute law, and whether such statute law comes from Congress itself or from a state, it is necessarily subordinate to the constitutional power of Congress over taxation.

Moreover, what does Justice Pitney mean when he says that income must be "severed" from its source—severed in what sense? Is, for example, the interest which is left by a depositor in a bank to draw further interest severed from the capital which produced it? Or take the instance mentioned by Justice Brandeis in his dissenting opinion. As he there points out, "the year's gains of a partner are taxable as income," even though there has been no segregation of his share in the total gains of the partnership. "Clearly," Justice Brandeis concludes, "segregation of assets in the physical sense is not an essential of income." Indeed it is to be feared that Justice Pitney will tell us next that there are no incomes except such as are constituted from corporate dividends formally declared, in which case he will have approximated to the Reverend Mr. Capstick's thesis with regard to the relation of sin and grace.

This brings us to the final turn in Justice Pitney's argument, and perhaps its most significant one. It consists of an appeal to the definition of "direct tax," laid down in the Pollock case of 1895 as a tax on property "because of ownership," which is shortly followed by the caution that the constitutional provision requiring that such taxes be apportioned "still has an appropriate and important function," and, at a considerable distance, by the assertion that "enrichment through increase in value of capital investment is not income in any proper meaning of the word." The argument thus insinuated clearly rests upon the assumption already dealt with, that a corporate surplus is to be treated as capital—or capital increase—prior to dividend declared, and so adds no independent force to Justice Pitney's position. It may, however, indicate the feeling of the court that it must henceforth endeavor to distinguish capital earnings and capital accretions, and when the two are merged to treat the whole as capital. The danger is that such an idea would, if persisted in, eventually so entangle the power of Congress to tax incomes in "a net work of juridical niceties" as to disable it entirely.

How, then, are we to assess Eisner v. Macomber at the present moment? That it falls in line with earlier decisions under the amendment and even farther back[4] is apparent, and this fact—it is equally

[4] The first of these is Gibbons v. Mahon (136 U. S. 548) in which the court, following what is called "the Massachusetts rule," decided that as between the holder of a life interest in an estate and the remainder man, the latter was entitled to receive a stock dividend. The decision turns of course upon the proposition that a stock dividend is not income and for this proposition the court urges several of the arguments which are reviewed above in Justice Pitney's opinion. The second precedent lies nearer to hand. It is the case of Towne v. Eisner (245 U. S. 418), in which the question at issue was whether the word "income" as used in the Act of 1913 included stock dividends. A unanimous court, speaking through Justice Holmes, who is a dissentient in Eisner v. Macomber, said no. It is true that Justice Holmes took pains to state in his opinion that the word "income" did not "necessarily" mean "the same thing in the Constitution and in the act" under review, but this does not prevent him from anticipating Justice Pitney in repeating the arguments which had been advanced in the Gibbons' case, arguments which are equally available, it would seem, to define the term "income" wherever it occurs. But the really compelling precedent is the decision in Lynch v. Hornby, which was noted above. This decision, clearly, could have been reached only by regarding the corporation and the stockholder as distinct entities, nor indeed could the tax there involved have been sustained under the Sixteenth Amendment on any other assumption. The majority of the court accordingly felt in the Macomber case, that Congress, having profited so conspicuously by this idea, ought also to shoulder its disadvantages. Indeed, Justice Brandeis himself virtually admits this degree of justification for the court's decision. He says:

"The equivalency of all dividends representing profits, whether paid in cash or in stock, is so complete that serious question of the taxability of stock dividends would probably never have been made if Congress had undertaken to tax only those dividends which represented profits earned during the year in which the dividend was paid, or in the year preceding. But this court, construing liberally not only the constitutional grant of power, but also the Revenue Act of October 3, 1913 [38 Stat. at L. 114, chap. 16, Comp. Stat. § 5291, 2 Fed. Stat. Anno 2d ed. p. 724], held that Congress might tax, and had taxed, to the stockholder, dividends received during the year, although earned by the company long before, and even prior to the adoption of the 16th Amendment. Lynch v. Hornby, 247 U. S. 339, 62 L. ed. 1149, 38 Sup. Ct. Rep. 543. That rule, if indiscriminatingly applied to all stock dividends, representing profits earned, might, in view of corporate practice, have worked considerable hardship, and have raised serious questions."

Recurring to Gibbons v. Mahon, it should be noted that the "Massachusetts rule" has been generally rejected by the state courts in favor of the "Pennsylvania," or as it is often called, the "American rule," which is that "where a stock dividend is paid, the court shall inquire into the circumstances under which the fund had been earned and accumulated out of which the dividend, whether a regular, an ordinary, or an extraordinary one, was paid. If it finds

evident—must constitute its principal justification. On the other hand, no more than its predecessors does it yield any clear cut theory of "income." Justice Pitney, to be sure, tells us that the word is used in the amendment in its "ordinary sense," but his own pursuit of this will-o-the-wisp appears to have landed him in a bog. Justice Brandeis, in his dissenting opinion, proffers, more or less casually, "the year's gains" as a definition, and certainly if any one feature presents itself to "ordinary sense" as demarking income from capital, it is its strict contemporaneity—income is current profits, capital is accumulated profits. Indeed, were the exactions of Congress to be confined to gains of the tax year, or approximately so, it may well be doubted whether it would ever be necessary for the court to concern itself with distinctions between capital increments and earnings, or even between the corporate entity and stockholders. Furthermore, this definition would slam the door once and for all on retroactive tax proposals, such as appeared in Congress last spring in connection with the Bonus Bill. That the court should ever have opened the door to such proposals is quite inexplicable, but having done so, it requires no seventh son of a seventh son to foresee that sooner or later it will have occasion to retrace some of its steps, not merely in deference to the distinction between "income" taxes and "direct" taxes, but to that between taxation and confiscation.[5] Altogether the case is important rather as a point of departure than for final results.

2. Taxation of Judicial Salaries

In Evans v. Gore[6] the court held that a general income tax levied, albeit without discrimination, upon the salaries of federal judges con-

that the stock dividend was paid out of profits earned since the decedent's death, the stock dividend belongs to the life tenant; if the court finds that the stock dividend was paid from capital or from profits earned before the decedent's death, the stock dividend belongs to the remainderman." Justice Brandeis, citing Earp's Appeal, 28 Pa. St. 368. It should also be noted that the Massachusetts Supreme Judicial Court has refused to regard the "Massachusetts rule" as pertinent in determining whether a stock dividend is "income" for purposes of taxation, which is accordingly held to be the case. Trefrey v. Putnam, 227 Mass. 522.

[5] See in this connection a communication by Charles Robinson Smith in the *Weekly Review*, June 22, 1920. Retroactive income taxes—supposing there can be such a thing—are obviously a double injustice when the rate of taxation is progressive, for then the past accumulation swells the rate at which the total income is taxed.

[6] 252 U. S., decided June 1, Justices Holmes and Brandeis dissenting.

stitutes a "diminution" of such salaries within the meaning of the Constitution,[7] and so held void section 213 of the Income Tax Act of February 24, 1919. Justice Van Devanter, speaking for the court, insists strongly upon the importance in the minds of the framers of the Constitution of the idea of judicial independence,[8] and from this deduces the conclusion that the constitutional provision involved is to be construed, not as a private grant, but as a limitation imposed in the public interest, and, therefore, broadly. So far he is unquestionably right, as also he is in claiming the support of precedent for the decision, notwithstanding the subsequent intervention of the Sixteenth Amendment, since it has been repeatedly ruled by the court in recent cases that this amendment does not "extend the taxing power to new or excepted subjects, but merely removes all occasion otherwise existing for an apportionment among the states of taxes laid on incomes."[9]

Nevertheless, this decision can hardly avoid the charge, on the one hand of pedantry, on the other hand of missing essential distinctions. Thus Justice Van Devanter cites previous cases for such propositions as, that the power to tax carries with it the power "to embarrass and destroy," the power "to select one calling and omit another,"[10] etc. The answer is that a tax which selected judicial salaries for peculiar burdens would be unconstitutional on the face of it, but that the tax before the court made no such discrimination, and as Justice Holmes puts it in his dissenting opinion, there is no good reason why a federal judge should be exonerated "from the ordinary duties of a citizen,

[7] Article 3, section 1, which reads as follows: "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office."

[8] Quoting from the *Federalist*, Nos. 78 and 79; Marshall's speech in the Virginia Convention of 1829; Sparks' *Writings of Washington*, Vol. 10, pp. 35–36; Story's *Commentaries*, Vol. 2, § 1628; Kent's *Commentaries*, Vol. 1, p. 294; Woodrow Wilson's *Constitutional Government*, 17, 142.

[9] Citing Brushaber v. Union P. R. Co., 240 U. S. 1; Stanton v. Baltic Min. Co., *ibid.*, 103; W. E. Peck & Co. v. Lowe, 247 U. S. 165; and Eisner v. Macomber *supra*.

[10] Citing M'Culloch v. Maryland, 4 Wheat. 316; Pacific Ins. Co. v. Soule, 7 Wall. 433; Austin v. Boston, 7 Wall. 694; Veazie Bank. v. Fenno, 8 Wall. 533; Knowlton v. Moore, 178 U. S. 41; Treat v. White, 181 U. S. 264; McCray v. United States, 195 U. S. 27; Flint v. Stone Tracy Co. 220 U. S. 107; Billings v. United States, 232 U. S. 261; Brushaber v. Union P. R. Co. 240 U. S. 1.

which he shares with all others." And in the same spirit should be answered Justice Van Devanter's poser: "Of what avail to him [the judge] was the part which was paid with one hand and then taken back with another?" It was of just this avail, that it enabled him to discharge a civic duty by contributing his proper share to the support of the government which gives him protection.

Moreover, in strict logic, the decision actually invites the very thing which it is intended to prevent. What the Constitution forbids is a diminution of salary during the term of the incumbent. What, then, is to prevent Congress, in view of the idea that the power to tax carries with it the power to make discriminations, from taxing salaries of future appointees to the federal bench at an especially high rate? In the case of the President, an even more curious result follows. His salary may be neither diminished nor increased during his term.[11] If, therefore, a President entered office under an act which taxed his salary as income, this tax could not be removed during the entire four years for which he was elected. As to all others the tax, supposing it to be a general one, might be repealed but the President would have to continue paying it to the end of the chapter.

A more serious aspect of Evans v. Gore is the intention which it manifests on the part of the court to sustain indefinitely the immunity of salaries of state officials and of incomes from state and municipal bonds from federal taxation. This immunity follows mathematically from the proposition that the Sixteenth Amendment does not increase the taxing power of Congress, when this is read in the light of the decision in Collector v. Day,[12] which is one of the precedents relied

[11] Article 2, section 1, which reads: "The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he may have been elected, and he shall not receive within that period any other emolument from the United States or any of them."

[12] 11 Wall. 113. In passing the Income Tax Law of 1919 Congress refused to treat interest received from bonds issued by a state or any of its counties or municipalities as within the taxing power (*Cong. Rec.*, Vol. 57, pp. 553, 774–777, 2988; ch. 18, § 213, 40 Stat. at L. 1065, Comp. Stat. § 6336½ ff.); and in the regulations issued under that law the administrative officers recognize that the salaries and emoluments of the officers of a state and its political subdivisions are not taxable by the United States (Reg. 45, published 1920, pp. 47, 313). Indeed, the provision pronounced void in the instant case was evidently regarded in Congress as of very doubtful constitutionality. Said the chairman of the house committee: "I wish to say, Mr. Chairman, that while there is considerable doubt as to the constitutionality of taxing . . . Federal judges'

upon for the present decision. This view of the Sixteenth Amendment is no doubt sound. Collector v. Day, on the contrary, ought to be reëxamined at the first opportunity from the point of view of more recent developments of constitutional law.[13] Nobody of course would claim that Congress may exercise its taxing power in a way to impair a republican form of government in the states.[14] But that fact furnishes no reason for building up a privileged class of property holders exempt from taxation by the national government as to their incomes, nor for thus stimulating extravagance in the state governments.[15]

II. NATIONAL PROHIBITION

1. War Prohibition

The provisions of the first War Prohibition Act, which was approved by the President ten days after the signing of the armistice, were confined to distilled liquors and to "intoxicating malt or vinous liquors." In Hamilton v. Kentucky Distilleries and Warehouse Company and Dryfoos v. Edwards,[16] the validity of the act and its enforcibility in the case of plaintiffs in error were challenged, on the ground that it violated the "due process of law" clause of the Fifth Amendment, that the war emergency which was urged in justification of it was at an

or the President's salaries, . . . we cannot settle it; we have not the power to settle it. No power in the world can settle it except the Supreme Court of the United States. Let us raise it, as we have done, and let it be tested, and it can only be done by someone protesting his tax and taking an appeal to the Supreme Court." And again: "I think really that every man who has a doubt about this can very well vote for it and take the advice of the gentleman from Pennsylvania [Mr. Graham] which was sound then and is sound now, that this question ought to be raised by Congress, the only power that can raise it in order that it may be tested in the Supreme Court, the only power that can decide it." *Congressional Record* 56: 10, 370. See also House Report, No. 767, 65th Cong., 2nd Sess., and Senate Report, No. 617, 65th Cong., 3rd Sess. These data are given in the notes to Justice Van Devanter's opinion.

[13] Especially the general principle that classifications must not be arbitrary. See Chief Justice White's opinion in the Brushaber case, *supra*. See also Justice Strong's opinion in R. R. Co. v. Peniston, 18 Wall 5.

[14] Article 4, section 4 of the Constitution, which reads: "The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion, and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence."

[15] Cf. Green v. Frazier, *infra*.

[16] 251 U. S. 146.

end, that it had been abrogated by the adoption of the Eighteenth Amendment.

A unanimous court, speaking through Justice Brandeis, rejected all three contentions. The argument based on the Eighteenth Amendment was reduced to an absurdity. If valid, said Justice Brandeis, it would apply even though hostilities were still flagrant, and as well against the police powers of the states as against the war powers of Congress. As to the passing of the war emergency, the court admitted that there were casual statements by the President to the effect that peace was here, but pointed to the continuance of the war activities of the government in a variety of fields as indicating the actual contrary judgment of the political branches of the government. It is, however, the court's answer to the first of the above recited objections which is of most interest from the point of view of the constitutional law. It may be given in Justice Brandeis' own language:

"That the United States lacks the police power, and that this was reserved to the states by the 10th Amendment, is true. But it is none the less true that when the United States exerts any of the powers conferred upon it by the Constitution, no valid objection can be based upon the fact that such exercise may be attended by the same incidents which attend the exercise by a state of its police power, or that it may tend to accomplish a similar purpose.[17] . . . . The war power of the United States, like its other powers and like the police power of the states, is subject to applicable constitutional limitations[18] . . . . but the 5th Amendment imposes in this respect no greater limitation upon the national power than does the 14th Amendment upon state power[19] . . . . If the nature and conditions of a restriction upon the use or disposition of property are such that a state could, under the police power, impose it consistently with the 14th Amendment without making compensation, then the United States may for a permitted purpose impose a like restriction consistently with the 5th Amendment without making compensation; for prohibition of the liquor traffic is

[17] Citing Lottery Case (Champion v. Ames) 188 U. S. 321; McCray v. United States, 195 U. S. 27; Hipolite Egg Co. v. United States, 220 U. S.; Hoke v. United States, 227 U. S. 308; Seven Cases v. United States, 239 U. S. 510; United States v. Doremus, 249 U. S. 86.

[18] Citing Ex parte Milligan, 4 Wall. 2; Monongahela Nav. Co. v. United States, 148 U. S. 312; United States v. Joint Traffic Asso. 171 U. S. 505; McCray v. United States, 195 U. S. 27; United States v. Cress, 243 U. S. 316.

[19] Citing Re Kemmler, 136 U. S. 436; Carroll v. Greenwich Ins. Co., 199 U. S. 401.

conceded to be an appropriate means of increasing our war efficiency." Justice Brandeis then proceeds to point out that the act effected no appropriation of liquor stocks for war purposes, but only imposed an uncompensated restriction upon their disposal, which "was of a nature far less severe" than restrictions previously imposed by state prohibition laws upon the use of existing stocks of liquor, and sustained by the court under the Fourteenth Amendment.[20]

The Distillery cases were decided on December 15, 1919. The act which they involved had already been supplanted by Part 1 of the so-called "Volstead Act," which was passed over the President's veto on October 28, 1919. In Ruppert v. Caffey,[21] decided on January 5,

[20] The opinion then continues as follows: "The question whether an absolute prohibition of sale could be applied by a state to liquor acquired before the enactment of the prohibitory law has been raised by this court, but not answered, because unnecessary to a decision. Bartemeyer v. Iowa, 18 Wall, 129; Boston Beer Co. v. Massachusetts, 97 U. S. 25; Eberle v. Michigan, 232 U. S. 700; Barbour v. Georgia, 249 U. S. 454. See, however, Mugler v. Kansas, 123 U. S. 623." The problem thus suggested is recurred to in Ruppert v. Caffey, *infra*, and disposed of as follows:

"Plaintiff contends, however, that even if immediate prohibition of the sale of its nonintoxicating beer is within the war power, this can be legally effected only provided compensation is made; and it calls attention to the fact that in Barbour v. Georgia, 249 U. S. 454, following some earlier cases, the question was reserved whether, under the police power, the states could prohibit the sale of liquor acquired before the enactment of the statute. It should, however, be noted that, among the judgments affirmed in the Mugler Case, was one for violation of the act by selling beer acquired before its enactment (see pp. 625, 627); and that it was assumed without discussion that the same rule applied to the brewery and its product (p. 669). But we are not required to determine here the limits in this respect of the police power of the states; nor whether the principle is applicable here under which the Federal government has been declared to be free from liability to an owner 'for private property injured or destroyed during the war, by operations of armies in the field or by measures necessary to their safety and efficiency' (United States v. Pacific R. Co. 120 U. S. 227); in analogy to that by which states are exempt from liability for the demolition of a house in the path of a conflagration, see Lawton v. Steele, 152 U. S. 133; or for garbage of value taken, (California Reduction Co. v. Sanitary Reduction Works, 199 U. S. 306; Gardner v. Michigan, 199 U. S. 325); or for unwholesome food of value destroyed (North American Cold Storage Co. v. Chicago, 211 U. S. 306; Adams v. Milwaukee, 228 U. S. 572) for the preservation of the public health. Here, as in Hamilton v. Kentucky Distilleries & Warehouse Co. *supra*, there was no appropriation of private property, but merely a lessening of value due to a permissible restriction imposed upon its use."

[21] 251 U. S. 264, decided January 5, Justices McReynolds (opinion), Day, Van Devanter, and Clarke dissenting. The same day was decided U. S. v. Standard

1920, the contention urged in the earlier cases that the war emergency justifying such measures by Congress had already passed, was renewed with two-fold vigor, and indeed with such degree of success as is represented in the achievement of a closely divided court, the case being decided in favor of the act by the narrow margin of one vote.

But not only was the Volstead Act late in the field, it was also a much more drastic enactment than its predecessor. That, as we have seen, confined its attention to distilled and intoxicating liquors; this forbade the manufacture and sale of all beverages that have an alcholic content as great as one half of one per cent in volume. In other words, it banned liquors which in point of fact were non-intoxicating; and this, plaintiff in error argued, Congress could not do even when clad in the full panoply of its war powers.

The court ruled nevertheless that "the question whether the plaintiff's beer was intoxicating was immaterial." From the experience of the states, attested by the action of their legislatures and the decisions of their courts, the opinion recites, "Congress might reasonably conclude that a rigid classification of beverages is an essential of either effective regulation or effective prohibition of intoxicating liquors."[22] The question, in short, was one solely of reasonable legisla-

Brewing Co. *ibid.* 210, in which the court held that the Act of November 21, 1918, did not prohibit the manufacture of malt and vinous liquors which were not intoxicating in fact, even though of greater alcoholic content than ½ of 1 per cent in volume. Later, in U. S. v. Simpson, —— U. S. ——, decided on April 19, it was held that the Reed "Bone-Dry" Amendment of March 3, 1917, covered the transportation of liquors for personal use of the owner in his own automobile.

[22] An elaborate epitome of state statutes and decisions dealing with the question of what is "intoxicating" is thus summarized by Justice Brandeis: "A test often used to determine whether a beverage is to be deemed intoxicating within the meaning of the liquor law is whether it contains ½ of 1 per cent of alcohol by volume. A survey of the liquor laws of the states reveals that in sixteen States the test is either a list of enumerated beverages without regard to whether they contain any alcohol, or the presence of any alcohol in a beverage, regardless of quantity; in eighteen States it is the presence of as much as or more than ½ of 1 per cent of alcohol; in six States, 1 per cent of alcohol; in one State, the presence of the 'alcoholic principle;' in two States 2 per cent of alcohol. Thus in forty-two of the forty-eight States—Maryland appears in two classes above—a malt liquor containing over 2 per cent of alcohol by weight or volume is deemed, for the purpose of regulation or prohibition, intoxicating as a matter of law. Only one State has adopted a test as high as 2.75 per cent by weight or 3.4 per cent by volume. Only two States permit the question of the intoxicating character of an enumerated liquor to be put in issue. In three

tive discretion; and "Since Congress has the power to increase war efficiency by prohibiting the liquor traffic, no reason appears why it should be denied the power to make its prohibition effective." Neither was it unreasonable or arbitrary to make the law operative directly upon its enactment, the same latitude having been repeatedly allowed the states in the exercise of their police powers. "Hardship resulting from making an act take effect upon its passage is a frequent incident of permissible legislation; but whether it shall be imposed rests wholly in the discretion of the law-making body."

The great importance of the War Prohibition cases consists in the definition which they afford of the legislative discretion of Congress under the "necessary and proper" clause, particularly in war time. Within its narrower field Congress enjoys, as against private rights, the same breadth of choice of measures to make its powers effective that the states enjoy in that wider field which is designated the police power. The principle is no doubt a beneficial one, but the very concession gives an edge to criticism of another feature of these cases, namely the failure of the court to go more thoroughly into the question of the existence of a war emergency. It is all very well that the national government should be recognized as constitutionally competent to meet great national emergencies, but the question whether at any particular time such an emergency exists is a material one, and neither Congress nor the President should be allowed to lift themselves, as it were, by their own boot straps into the possession of unusual powers.

2. The Eighteenth Amendment

The Eighteenth Amendment[23] was proposed by Congress on December 3, 1917, proclaimed as part of the Constitution by the secretary of state on January 29, 1919, and put in operation one year later by the

other States the matter has not been made clear either by decision or legislation. The decisions of the courts as well as the action of the legislatures make it clear —or, at least, furnish ground upon which Congress reasonably might conclude— that a rigid classification of beverages is an essential of either effective regulation or effective prohibition of intoxicating liquors."

[23] "SECTION 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

"SECTION 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation."

Volstead Act, the passage of which over the President's veto on October 28, 1919, was noted above. The proclamation of the amendment acted upon the enemies of national prohibition as a call to arms, and very soon, under the leadership of a coterie of distinguished and well-feed counsel, they proclaimed their intention of fighting the amendment to the last stand, that is, the Supreme Court of the United States.

The opening gun in the war thus declared was set off in Hawke v. Smith,[24] in which the question at issue was the validity of a recent provision of the Ohio constitution reserving to the people of that state "the legislative power of referendum on the action of the General Assembly ratifying any proposed amendment to the Constitution of the United States;" or more broadly, whether the people of the states can control in any way the action of their legislatures in performing their function in connection with proposed amendments to the United States Constitution.

Those who answered this question affirmatively relied upon one or both of the two following propositions: (1) that it was the intention of article 5 of the Constitution in employing the term "legislatures" to require ratification by the legislative action of the states through the agencies existing at the time of the approval of an amendment; (2) that even if this did not necessarily follow from the meaning of the word "legislatures" as used in this context, it at any rate resulted from the fact that the participation of the state legislatures in the work of amending the national Constitution was in exercise of an inherent right of the states, from which it followed in turn that the states must be able to control their agents in exercising this right.

Evidently this argument invokes afresh the conception of the Constitution as a compact of states vested with rights which no authority conferred by the Constitution can possibly invade; and indeed, Justice Day, in pronouncing the opinion of the unanimous court, meets this conception at the threshhold of his argument. Thus he writes: "The Constitution of the United States was ordained by the people, and, when duly ratified, became the Constitution of the people of the United States, McCulloch v. Maryland, 4 Wheat 316. The states surrendered to the general government the powers specifically conferred upon the nation and the Constitution and laws of the United States are the supreme law of the land." From this it follows that, the fifth article being "a grant of authority by the people to Congress,"

[24] 252 U. S., decided June 1.

"the determination of the method of ratification is the exercise of a national power specifically granted by the Constitution," not of a power retained by the states. It likewise follows that "the ratification by a state of a constitutional amendment is not an act of legislation within the proper sense of the word," but the exercise of a power also having "its source in the federal Constitution, ... to which the state and its people have alike assented."[25]

The question before the court, therefore, becomes narrowed simply to this: "What did the framers of the Constitution mean in requiring ratification by 'legislatures;'" and to raise this question, Justice Day implies, is to answer it. The Constitution uses the term "legislature" or "legislatures" several times, and always in the evident sense of a representative body vested with power to make laws for the people, and consisting, it is generally assumed, of a more and a less numerous branch. Indeed, the Seventeenth Amendment, the most recent addition to the Constitution preceding the Eighteenth, uses the term "state legislatures" with precisely this connotation, and in clear contradistinction to "the electors," that is the voters of the states, and again "to the people" thereof.

But Hawke v. Smith was, as indicated above, only the opening gun of an assault all along the line by the forces of evil. On various dates in March no fewer than seven cases,[26] two of which were original bills

[25] The opinion further says: "At an early day this court settled that the submission of a constitutional amendment did not require the action of the President. The question arose over the adoption of the 11th Amendment. Hollingsworth v. Virginia, 3 Dall. 378. In that case it was contended that the amendment had not been proposed in the manner provided in the Constitution, as an inspection of the original roll showed that it had never been submitted to the President for his approval, in accordance with article 1, § 7 of the Constitution. The Attorney-General answered that the case of amendments is a substantive act, unconnected with the ordinary business of legislation, and not within the policy or terms of the Constitution investing the President with a qualified negative on the acts and resolutions of Congress. In a footnote to this argument of the Attorney General, Justice Chase said: 'There can surely be no necessity to answer that argument. The negative of the President applies only to the ordinary cases of legislation. He has nothing to do with the proposition, or adoption, of amendments to the Constitution.' The court by a unanimous judgment held that the amendment was constitutionally adopted."

[26] State of Rhode Island, Complainant, v. A. Mitchell Palmer, Attorney General, et al. (No. 29, Original.) State of New Jersey, Complainant, v. A. Mitchell Palmer, Attorney General, et al. (No. 30, Original.) George C. Dempsey, Appt., v. Thomas J. Boynton, as United States Attorney, et al. (No. 696.) Kentucky Distilleries & Warehouse Company, Appt., v. W. V. Gregory,

of equity, brought respectively by the states of Rhode Island and New Jersey to enjoin the attorney general of the United States from enforcing the Volstead Act, were argued on all phases of the amendment and the act. Not since the Milligan case was argued in 1866 has a more notable array of counsel stood up before the court, while the *amici curiae* filing briefs in the cases comprised precisely half the state attorneys general of the Union.

The court in sustaining the act did not hand down the customary argumentative opinion but only certain propositions labelled "Conclusions of the Court," which were read by Justice Van Devanter.[27]

as United States Attorney, et al. (No. 752.) Christian Feigenspan, a Corporation, Appt., v. Joseph L. Bodine, as United States Attorney, et al. (No. 788.) Hiram A. Sawyer, as United States Attorney, et al., Appts., v. Manitowoc Products Company. (No. 794.) St. Louis Brewing Association, Appt., v. George H. Moore, Collector, et al. (No. 837.) The cases were decided June 7. Earlier in the term, on January 12, the court had refused jurisdiction of an original suit brought by a citizen of New Jersey, to enjoin the Attorney-General and certain other officials of the United States, as well as the state of New Jersey, from enforcing the Eighteenth Amendment. Duhne v. United States, 251 U. S. 311. The decision rests on Marbury v. Madison, 1 Cranch 129 and Hans v. La., 134 U. S. 1.

[27] "1. The adoption by both Houses of Congress, each by a two-thirds vote, of a joint resolution proposing an amendment to the Constitution, sufficiently shows that the proposal was deemed necessary by all who voted for it. An express declaration that they regarded it as necessary is not essential. None of the resolutions whereby prior amendments were proposed contained such a declaration.

"2. The two-thirds vote in each House which is required in proposing an amendment is a vote of two thirds of the members present,—assuming the presence of a quorum,—and not a vote of two thirds of the entire membership, present and absent. Missouri P. R. Co. v. Kansas, 248 U. S. 276.

"3. The referendum provisions of state constitutions and statutes cannot be applied, consistently with the Constitution of the United States, in the ratification or rejection of amendments to it. Hawke v. Smith, 252 U. S., decided June 1, 1920.

"4. The prohibition of the manufacture, sale, transportation, importation, and exportation of intoxicating liquors for beverage purposes, as embodied in the 18th Amendment, is within the power to amend reserved by Article 5 of the Constitution.

"5. That Amendment, by lawful proposal and ratification, has become a part of the Constitution, and must be respected and given effect the same as other provisions of that instrument.

"6. The first section of the Amendment—the one embodying the prohibition—is operative throughout the entire territorial limits of the United States, binds all legislative bodies, courts, public officers, and individuals within those limits,

Commenting upon this quite unusual procedure, Justice McKenna, the sole dissentient, opines that if the precedent is followed, "it will decrease the literature of the court, even if it does not increase its lucidity." As a matter of fact, the "Conclusions" are to a large extent self-explanatory. Conclusion (1) flows from the well settled maxim that the court cannot pass upon the necessity of an exercise by Congress of any of its powers. Conclusions (2), (3) and (11) reiterate points recently decided. Conclusion (5) is simply a deduction from conclusions (1), (2), (3) and (4). Conclusions (6) and (7) may be fairly designated as self-evident, though the latter brings out the interesting fact that a too "liberal" enforcement act, whether congressional or state, would be subject to judicial review equally with a too drastic one. Conclusion (10) only restates results which had been reached long ago by the court in delimiting the police power of the states, and applicable *á fortiori* to the power of amending the Constitution of the United States. The same remark, moreover, applies to

and of its own force invalidates every legislative act—whether by Congress, by a state legislature, or by a territorial assembly—which authorizes or sanctions what the section prohibits.

"7. The second section of the Amendment—the one declaring 'the Congress and the several states shall have concurrent power to enforce this article by appropriate legislation'—does not enable Congress or the several states to defeat or thwart the prohibition, but only to enforce it by appropriate means.

"8. The words 'concurrent power' in that section do not mean joint power, or require that legislation thereunder by Congress, to be effective, shall be approved or sanctioned by the several states or any of them; nor do they mean that the power to enforce is divided between Congress and the states along the lines which separate or distinguish foreign and interstate commerce from intrastate affairs.

"9. The power confided to Congress by that section, while not exclusive, is territorially coextensive with the prohibition of the first section, embraces manufacture and other intrastate transactions as well as importation, exportation, and interstate traffic, and is in no wise dependent on or affected by action or inaction on the part of the several states or any of them.

"10. That power may be exerted against the disposal for beverage purposes of liquors manufactured before the Amendment became effective, just as it may be against subsequent manufacture for those purposes. In either case it is a constitutional mandate or prohibition that is being enforced.

"11. While recognizing that there are limits beyond which Congress cannot go in treating beverages as within its power of enforcement, we think those limits are not transcended by the provision of the Volstead Act (title II. § 1), wherein liquors containing as much as ½ of 1 per cent of alcohol by volume, and fit for use for beverage purposes, are treated as within that power. Jacob Ruppert v. Caffey, 251 U. S. 264."

Conclusion (4), which therefore demands elucidation only for its bearing on the question of the scope of the amending power as against the reserved rights of the states. But as we have just seen, the decision in Hawke v. Smith rests on the proposition that the powers conferred by the Constitution on the nation are supreme over all conflicting state powers whatsoever. Naturally, a power is not to be defined by reference to powers over which it is paramount.

Two conclusions, then, remain to be disposed of, namely (8) and (9), which embody the court's construction of the phrase "concurrent power" of section 2 of the amendment. The court was confronted by counsel with three possible interpretations of this phrase: (1) that it required concurrent, that is joint action, by Congress and the states in the enforcement of the amendment; (2) that it divided the field of action between Congress and the states along the lines which distinguish foreign and interstate commerce from intrastate affairs; (3) that it gave both Congress and the states power to act separately in enforcing the amendment, contemplating however, that in the event of conflict between congressional and state action, the former by virtue of article 6 of the Constitution[28] would prevail. The court definitely rejects the first two constructions and remains noncommittal with reference to the third. But no other principle, it is submitted, is broad enough to sustain conclusions (8) and (9). In its own good time no doubt the court will announce in unmistakable terms its continued adherence to the historical conception of "concurrent power" and the applicability of the conception to the Eighteenth Amendment.[29]

[28] "This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

[29] Chief Justice White, however, in his concurring opinion, rejects all three views of "concurrent power," arguing that the "supremacy" clause is not operative in this instance, since the power of Congress and of the states to act comes equally from the Constitution itself, indeed from the same section of it. His own theory is that the power to define "intoxicating liquors" comes not from the second section of the amendment but from the first, and so rests exclusively in Congress, and that all that was sought by the second section was "to unite national and state administrative agencies in giving effect to the Amendment and the legislation of Congress enacted to make it complete." The argument is ingenious, but not altogether convincing. The "supremacy" clause takes no account of the source of the right of the state to act; it simply decrees that when both state and nation have the right to act the national view shall prevail.

But there is also a second question which conclusions (8) and (9) fail to answer clearly: Thus even with the supremacy of congressional action over conflicting state action clearly established in principle, the question would still remain, what sort of state action is conflicting? Suppose, for instance, that Congress should amend the Volstead Act so as to allow the manufacture and sale of beverages with an alcoholic content of five per cent, but that some of the states should still desire to outlaw beverages with a much smaller alcoholic content—could they do so within their own limits? Chief Justice White and Justice McKenna would unquestionably say no. Mr. Wayne Wheeler and other worthies of the Anti-Saloon League are of the contrary opinion. The majority of the court is again noncommittal.

The final impression left by these cases is that of the unlimited scope of the power to amend the national Constitution. Theoretically this may not be so as against private rights, but practically it is, since common prudence will never permit the court to traverse the will of two-thirds of Congress and three-fourths of the state legislatures. And the deduction to be made from this fact is obvious. The method of amendment should itself be amended, so as to render it at once more democratic and more conservative. State legislatures are no fit organs of this power; they are too open to solicitation, too timid. Happy ideas should be required to enter the Constitution through the portals of the ballot booth.[30]

Furthermore, it may well be contended, in view of Amendment 10 (see note 45, later) that all state powers are of constitutional rank. The term "concurrent powers" originated in *Federalist* No. 32 (Lodge's edition). It was given the significance attached to it by government's counsel in the present litigation in Justice Curtis's opinion in Cooley v. Board of Wardens, 12 How. 299 (1851). See also Southern R. Co. v. Reid, 222 U. S. 1.

[30] There may also be a reason in constitutional theory why the court should not attempt to pass upon the validity of amendments to the Constitution which have been adopted in due form. Unless the authority which "ordained and established" the Constitution originally has in some unaccountable manner disappeared, it must today be vested in the body which amends the Constitution. But this authority, having assumed to bestow all kinds of power, legislative, executive, and judicial, must be possessed of all kinds of power, with the result that the principle of the separation of powers, and therefore judicial review, are inapplicable to its acts. In other words, like the High Court of Impeachment, the body which amends the Constitution is the only court of its character, and, therefore, is the final judge of its own jurisdiction.

III. FREEDOM OF SPEECH AND PRESS[31]

The issue of constitutional freedom of speech and press was first raised in relation to the Espionage Act of 1917 in three cases decided the last term of court.[32] In one of these, that of Schenck v. United States, Justice Holmes, speaking for the unanimous court, dealt with the constitutional issue in the following terms: "The character of every act depends upon the circumstances in which it is done. The most stringent protection of free speech would not protect a man in falsely shouting 'fire' in a theatre and causing a panic. . . . The question in every case is whether the words were used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has the right to prevent." Commenting upon this passage and one of similar implication in the Frohwerk case in his article in this REVIEW, Professor Powell said: "This certainly hints that the Supreme Court may hold as a matter of law that the likelihood of any harm ensuing from the objectionable publication is so slim that a conviction is unwarranted."[33] This prophesy has been vindicated during the recent term of court to this extent: that whether the court shall supervise the verdicts of juries with some such test in mind seems to be, in one guise or another, the issue which has divided the previously unanimous court in the more recent cases.

The most instructive of these cases is that of Abrams et al. v. United States,[34] in which plaintiffs in error had been convicted of having urged a curtailment of products essential to the prosecution of the war "with intent by such curtailment to cripple or injure the United States in the prosecution of the war" with Germany. What Abrams and his associates had actually done was to print and distribute circulars denouncing "the Hypocrisy of the United States and her Allies," and summoning "the workers to a general strike." "Workers in the ammunition factories," read one of the circulars, "you are producing bullets, bayonets, cannon, to murder not only Germans but also your

[31] The First Amendment reads as follows: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

[32] Schenck v. United States, 249 U. S. 47; Frohwerk v. United States, *ibid.*, 204; Debs v. United States, *ibid.*, 211.

[33] 14 *American Political Science Review*, 65.

[34] 250 U. S. 616, decided November 10, 1919.

dearest, best who are in Russia and are fighting for freedom. . . . . Workers up to fight." The authorship of these documents and the responsibility for their circulation were not denied, but it was contended that the conviction was nevertheless not warranted because the required criminal intent was lacking, the intent moving the accused having been the entirely innocent one of protesting against war by the Entente against Russia.

The court by a vote of seven to two sustained the conviction, Justice Clarke speaking for the majority. His central proposition is the ancient maxim that "men must be held to have intended and to be accountable for the effects which their acts were likely to produce. Even if," he continues, "their primary purpose and intent was to aid the cause of the Russian Revolution, the plan of action which they adopted necessarily involved, before it could be realized, defeat of the war programme of the United States."

To this reasoning Justice Holmes responds in his dissenting opinion as follows: "I am aware, of course, that the word 'intent' as vaguely used in ordinary legal discussion means no more than knowledge at the time of the act that the consequences said to be intended will ensue. Even less than that will satisfy the general principle of civil and criminal liability. . . . . But, when words are used exactly, a deed is not done with intent to produce a consequence unless that consequence is the aim of the deed. . . . . It seems to me that this statute must be taken to use its words in a strict and accurate sense. They would be absurd in any other. A patriot might think that we were wasting money on aeroplanes, or making more cannon of a certain kind than we needed, and might advocate curtailment with success; yet, even if it turned out that the curtailment hindered and was thought by other minds to have been obviously likely to hinder the United States in the prosecution of the war, no one would hold such conduct a crime."

Standing by itself this argument will hardly hold water. The legal test of intent does not establish, as Justice Holmes seems to imply, a conclusive presumption but one which may be refuted by evidence.[35] The published debates on the Espionage Act show conclusively that Congress was using the word "intent" on this occasion in what Justice Holmes himself admits is its legal sense.[36] The suppositious advocate

[35] See *Interpretations of War Statutes*, Bulletins 4, 49, 52, 79, 83, 112, 116, 133, 142, 148, 149, 156, 191, etc.

[36] See the debate of May 4, 1918. *Congressional Record*, 65th Cong., 2nd Sess., pp. 6039–6043.

of aeroplane production would be, it may be assumed, discreet enough not to apply the term "murder" to the war which he was ostensibly promoting. Finally, common sense no less than common law exact that a man be held to intend the necessary means to his objectives.

But it appears from further examination of his opinion that Justice Holmes does not regard his unconventional view of intent as standing by itself, but rather as a necessary instrument for enforcing the doctrine which he had earlier advanced in the Schenck case.[37] So the ultimate question raised is as to the soundness of that doctrine regarded as a limitation on the power of Congress in relation to freedom of speech and press. The pretended limitation is apparently made up out of whole cloth.[38] Congress has, of course, no general power to deal with freedom of speech and press. What power it has is derived from the "nec-

[37] Thus Justice Holmes's opinion continues: "It is only the present danger of immediate evil or an intent to bring it about that warrants Congress in setting a limit to the expression of opinion where private rights are not concerned. Congress certainly cannot forbid all effort to change the mind of the country. Now nobody can suppose that the surreptitious publishing of a silly leaflet by an unknown man, without more, would present any immediate danger that its opinions would hinder the success of the government arms or have any appreciable tendency to do so. Publishing those opinions for the very purpose of obstructing, however, might indicate a greater danger, and at any rate would have the quality of an attempt. So I assume that the second leaflet, if published for the purposes alleged in the fourth count, might be punishable. But it seems pretty clear to me that nothing less than that would bring these papers within the scope of this law. An actual intent in the sense that I have explained is necessary to constitute an attempt, where a further act of the same individual is required to complete the substantive crime, for reasons given in Swift & Co. v. United States, 196 U. S. 375, 396, 49 L. ed. 518, 524, 25, Sup. Ct. Rep. 276. It is necessary where the success of the attempt depends upon others, because if that intent is not present, the actor's aim may be accomplished without bringing about the evils sought to be checked. An intent to prevent interference with the revolution in Russia might have been satisfied without any hindrance to carrying on the war in which we were engaged." All this assumes that Congress may punish only utterances which constitute criminal attempts, and no proof is adduced of this assumption. The same idea had been put forward earlier by Professor Zechariah Chafee in an article in 32 *Harvard Law Review*, 947, where it is taken from a passage in Stephen's *History of the Criminal Law*, Vol. 2: 300. Stephen characterizes it as an "extreme" view, a characterization which Professor Chafee omits. See also Justice Holmes's earlier opinion in Patterson v. Col., 205 U. S. 454.

[38] See the present writer's article, "Freedom of Speech and Press: a Résumé," in the *Yale Law Journal* (Nov., 1920); also 33 *Harvard Law Review*, 442 ff., which sets forth essentially the same point of view. See also, for a somewhat different point of view, W. R. Vance in 2 *Minnesota Law Review*, 239 ff.

essary and proper" clause, but the breadth of legislative discretion accorded by this clause, especially in war time, has already been illustrated by the War Prohibition cases. It is, moreover, a sound maxim of constitutional construction, which has received the approval of the court more than once, that the Constitution does not grant power in one section to withdraw it in another.[39]

The Abrams case was followed by a group of cases headed by Schaefer v. the United States,[40] and by the single case of Pierce v. the United States.[41] In the former, the conviction of two of the defendants was reversed and that of three was sustained; the conviction of Pierce was also sustained. Both occasions brought forth dissenting opinions from Justice Brandeis for himself and Justice Holmes, which, setting out from the principle asserted by the latter in the Schenck case, then proceed to a close examination of the evidence before the trial courts. The practical issue between majority and minority appears therefore to be, as was stated above, the degree of supervision which should be exercised by the court over the findings of juries in this class of cases. The majority say in effect, no greater degree of supervision than in ordinary criminal cases; the minority want a somewhat more extensive supervision.[42]

In summing up the results which the court has reached in its enforcement of the Espionage Act, so far as they bear on the subject of constitutional freedom of speech and press, the following propositions are tentatively offered: (1) Congress is not limited to forbidding words which are of a nature "to create a clear and present danger" to national interests, but it may forbid words which are intended to endanger those interests if in the exercise of a fair legislative discretion it finds it "necessary and proper" to do so; (2) the intent of an accused in uttering alleged forbidden words may be presumed from the reasonable consequences of such words, but the presumption is not a conclusive one and may be rebutted by evidence; (3) the court will not scrutinize on appeal the findings of juries in this class of cases more strictly than in other penal cases. In short, the cause of freedom of speech and press is largely in the custody of legislative majorities and of juries.

(*To be concluded.*)

[39] Billings v. United States, 232 U. S. 261; Brushaber v. Union P. R. Co., 240 U. S. 1.

[40] 251 U. S. 466, decided March 1.

[41] 252 U. S., decided March 8.

[42] See, in this connection, Goldman v. United States, 245 U. S. 474, 477.

AMERICAN GOVERNMENT AND POLITICS

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The Second Session of the 66th Congress.[1] The session of Congress which began on December 1, 1919, adjourned on June 5, 1920, to permit the members to attend the presidential nominating conventions and to participate in the campaign. It came to an end with a remarkable interchange of telegrams between President Wilson and the heads of seventeen railroad workers' unions. The chief executive expressed himself in no uncertain terms. During the nine months that the Sixty-sixth Congress had been in session, he said, no attempt had been made to deal with the cost of living, or to revise the tax laws. The railroad legislation was "so unsatisfactory that I could accept it, if at all, only because I despaired of anything better."

"In the light of the record of the present Congress," the President declared, "I have no reason whatever to hope that its continuance in session would result in constructive measures for the relief of the economic conditions to which you call attention. It must be evident to all that the dominating motive which has actuated this Congress is political expediency rather than lofty purpose to serve the public welfare."[2]

Principal Legislation of the Session. It is true that Congress left many problems half completed or untouched. The senate continued

[1] For previous notes on the work of Congress, see *American Political Science Review*, XIII, 251 (1919) and XIV, 74 (1920).

[2] In their telegram to the President the spokesmen for the railroad workers said that: "despite the revelations as to the profiteering scandal, Congress has done nothing to check the evil or to punish the evil-doers; that the cost of living continues to advance without a single remedial measure having been passed, and that there has not been even serious consideration of constructive legislation dealing with the serious problem of industrial unrest.

"In the circumstances it appears to us incredible that the responsible Government at Washington can assent to this seeming agreement to a continuation of a do-nothing policy, which means that the grave economic problems of the people are to be made the plaything of politics and politicians for the five months. It invites political chaos and business disaster. Congress should remain in session."

to spend a great part of its time on the Peace Treaty,[3] and both the senate and the house thought primarily of the effect of their activities on the presidential campaign rather than of efficient legislation; partisanship and hostility to the President were the dominant *motifs* of the session. Judged by the number of laws passed, Congress worked hard, but it is difficult to believe that most of the problems dealt with required the collective wisdom of 531 statesmen, drawing moderate salaries, enjoying extensive perquisites, meeting in a magnificent building for five months, and printing the results of their deliberations and of their meditations (under leave to print) to the extent of some millions of words.[4]

[3] The debate in the senate on the Peace Treaty is exhaustively considered by George A. Finch, "The Treaty of Peace with Germany in the United States Senate: An Exposition and a Review." 14 *American Journal of International Law*, 155–206; reprinted in *International Conciliation*, No. 153, August, 1920.

[4] For an estimate of the work of Congress considerably more flattering and, unconsciously, somewhat amusing, see the review of the legislative session by Mr. Mondell, Republican floor leader in the house, published (under leave to extend remarks) *Congressional Record*, June 21, 1920, pp. 9467–9479. Mr. Mondell inserted in his remarks the following statistical comparison of the Sixty-fifth and Sixty-sixth Congresses:

HOUSE OF REPRESENTATIVES

	FIRST SESSION, SIXTY-SIXTH CONGRESS	FIRST SESSION, SIXTY-FIFTH CONGRESS	SECOND SESSION, SIXTY-SIXTH CONGRESS	SECOND SESSION, SIXTY-FIFTH CONGRESS	FIRST AND SECOND SESSIONS SIXTY-SIXTH CONGRESS	FIRST AND SECOND SESSIONS SIXTY-FIFTH CONGRESS
Convened	May 19, 1919	Apr. 2, 1917	Dec. 1, 1919	Dec. 3, 1917		
Adjourned	Nov. 19, 1919	Oct. 6, 1917	June 5, 1920	Nov. 21, 1918		
Calendar days	184	188	188	354	372	542
Actual days in session	144	114	146	247	290	361
Bills introduced	10,735	6,511	3,725	6,661	14,460	13,172
Joint resolutions introduced	249	163	132	189	381	352
Simple resolutions introduced	397	173	193	279	590	452
Concurrent resolutions introduced	38	26	23	35	61	61
Total bills and resolutions	11,419	6,873	4,073	7,164	15,492	14,037
Public laws:						
Approved	71	91	193	152	264	243
Without approval	20				20	
Over veto	2				2	
Total public laws	93	91	193	152	286	243

Eight hundred and fifty-eight reports were made from committees, while 618 were made during the corresponding sessions of the Sixty-fifth Congress.

During the session Congress passed 193 public laws, 31 public resolutions, 67 private laws, and one private resolution. Almost without exception the private laws were for the relief of various individuals and corporations which had claims against the government, but many of the public laws were of such a character that it is difficult to believe that they required consideration by Congress. Of these 49 were purely local in character, and, in addition, 44 related to bridges, 8 to the District of Columbia, and 2 changed the names of steamers. Congress gave a charter to the Roosevelt Memorial Association and amended that of the National Educational Association. Provision was made for the coinage of fifty cent pieces to commemorate the one hundredth anniversary of Maine's admission to the Union; Alabama, however, will have to be content with a special issue of quarters. The Pilgrims—for the three hundredth anniversary of their landing—were given the same honor as Maine. Of the remaining so-called public laws, a number dealt with the Indians and with minor questions of administrative powers. Judged by the legislative grist, Congress spends an astounding proportion of its time on picayune matters, to say nothing of the private legislation which is, by all odds, the chief interest of many members.[5]

Of the many measures which Congress passed, only a few are worth mentioning here.[6] A long needed civil service retirement law (Public

[5] It is interesting to compare this situation with that which obtains in the English house of commons. A table in *The Liberal Year Book for 1920* (p. 136) shows that, from 1906 to 1919, government business took from 92½ to 144 days of each session, while private members' motions took from 3½ to 27 days. The total number of public and local acts ranged from 87 to 168. Of the public general acts, from 27 to 105 were introduced by ministers; while the maximum of private members' bills passed in one year was 17, and from 1914–16 to 1918 no private members' bills became law. Local acts formed from one-third to two-thirds of the total number passed, most of these being provisional order acts and confirmation acts under the Private Legislation Procedure (Scotland) Act of 1899.

[6] In order that nothing of importance may be omitted, I include the list prepared by Mr. Mondell, *Congressional Record*, p. 9474: The railway transportation act. (Public No. 152.) The legislation for a national budget. (Veto, H. R. 9783.) Reform of the rules of the house and senate in the consolidation of committees as a part of the program of budget reform. (H. Res. 324.) The Army reorganization act. (Public No. 242.) The merchant marine shipping act. (Public No. 261.) The oil and coal land leasing law. (Public No. 146.) The water-power act. (H. R. 3184.) Act for the vocational rehabilitation of persons disabled in industry. (Public No. 236.) The civil service retirement act. (Public No. 215.) The act establishing a woman's bureau in the department of labor. (Public No. 259.) The peace resolution. (Veto, H. J.

No. 215; May 22) provides a maximum pension of $720 and a minimum of $180 for superannuated employees who, to be eligible, must have been in the government service for fifteen years and must contribute two and one half per cent of their salaries to the retirement fund. The maximum expenses of the government will probably not be more than $10,000,000 annually, and the treasury estimates that the gain in efficiency will be at least five per cent or more than $18,000,000 a year.

The Army and National Guard Reorganization Law (Public 242; June 4) was a barren victory for the war department.[7] The Merchant

Res. 327.) The act for the repeal of the war laws. (Pocket veto, H. J. Res. 373.) The act reclassifying and readjusting the salaries of postal employees. (Public No. 265.) The act increasing pensions to veterans of the Civil and Mexican Wars. (Public No. 190.) The act increasing pensions to veterans of the Spanish-American War and Philippine insurrection. (Public No. 256.) The act to exclude and expel anarchistic aliens. (Public No. 262.) The act increasing the efficiency and pay of commissioned and enlisted personnel of the Army, Navy, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service. (Public No. 210.) The act for examination and report on irrigation development of the Imperial Valley, Calif. (Public No. 208.) The act authorizing the United States Grain Corporation to provide relief to populations in Europe and the Near East by furnishing flour valued at $50,000,000. (Public No. 167.) The act authorizing the secretary of war to transfer surplus motor-propelled vehicles, motor equipment, and road-making material to departments of the government and to the states. (Public No. 159.) The act providing for furnishing water supply for miscellaneous purposes in connection with reclamation projects. (Public No. 147.) Amendment of federal reserve act providing for corporations authorized to do foreign banking business. (Public No. 106.) The Sweet Act amending the war-risk insurance act, increasing the efficiency of the bureau and greatly liberalizing the provisions of the act in the payment of compensation to disabled soldiers, sailors, and marines. (Public No. 104.) Resolution authorizing the appointment of a commission to confer with the governments of the Dominion and certain provinces of Canada with a view of securing restriction on the exportation of pulp wood, with a view of reducing the price of print paper. (Pocket veto.) The act authorizing secretary of the treasury to purchase certain federal farm loan bonds. (Public resolution, No. 45.)

[7] On February 9, 1920 Democratic members of the house refused to forego an expression of their opinion on universal military training although the President asked that party action be deferred until the national convention. The vote was 88 to 37. President Wilson expressed his views in a letter to Secretary Baker asking him to "convey to appropriate members of the House, who will attend the caucus, my strong feeling against action by the caucus which will tend to interpose an arbitrary party determination to the consideration which this subject should receive from the best thought of the members of the House, considering alike the national emergencies which may confront us and the great disciplinary and other advantages which such a system plainly promises for the young men of the country."

Marine Shipping Act (Public 261; June 5) is a makeshift; it endeavors to help the American carrying trade, but calls for the denunciation of a number of our commercial treaty engagements. Anarchistic aliens were excluded (Public 262; June 5);[8] amendments were passed for the Federal Reserve Act (Public 170; April 13), the Farm Loan Act (Public 182; April 20) and the Revenue Act of 1918 (Public 185; April 23). The Edge Export Bill also became law (Public 106; December 24) and there was some water power (Public 280; June 10) and oil land leasing legislation (Public 146; February 25).[9] A railroad reorganization law was necessary before March 1, so the Esch-Cummins Bill (Public 152; February 28, 1920) was accepted.[10] President Wilson did not express an extreme view in what he said of the law.[11]

[8] Public protests were so great that Congress failed to pass any anti-sedition bill although, when first discussed, it seemed that its speedy enactment was assured. On January 10, 1920, the senate passed the Sterling Bill (S. 3317), and on January 12 the house judiciary committee reported the Graham Bill (H. R. 11430; report no. 536), recommending its passage. On January 14 the judiciary committee reported the Sterling Bill amended (report no. 542). Hearings before the rules committee of the house on a proposed rule to give the measure immediate consideration, showed such opposition (including that of Mr. Gompers and the American Federation of Labor) that the legislation was abandoned.

The house committee on the judiciary spent some time in investigating charges of radicalism against Louis F. Post, assistant secretary of labor (H. Res. 522). Victor Berger, who had been excluded from the house at the special session (November 10, 1919) by a vote of 311 to 1, was again (after being reëlected from his district) refused permission to take his seat (January 10, 1920). The vote was 330 to 6 and Berger was not allowed to address the house in his own behalf.

[9] The water power bill was reported in the house of representatives on June 24, 1919 and passed on July 1. It did not pass the senate until January 15, 1920 and stayed in conference from January 17 until April 30. Action on the oil land leasing law was more expeditious, only six months being required for its passage. It was approved by the senate on September 3, by the house on October 30, and remained in conference until February 10, 1920.

[10] The legislative history of the law was as follows: S. 3288 (Cummins). Reported in senate, October 23, 1919. New senate report 304 (Nov. 10). H. R. 10453 substituted. H. R. 10453 (Esch). House Report 456 (Nov. 10, 1919). Passed house (Nov. 17). Reported in senate (Dec. 9). Passed senate (Dec. 20). Sent to conference (Dec. 20). Conference: house report 650 (Feb. 18). Agreed to in house (Feb. 21) and in senate (Feb. 23). Approved (Feb. 28), 1920.

[11] For discussions of the law, see *Proceedings of the Academy of Political Science*, January, 1920; *Monthly Labor Review* (U. S. Dept. of Labor), April, 1920; *New York Times Current History*, March, 1920; a symposium in *The Nation*, August 16, 1919; *Hearings before the Committee on Interstate and Foreign Commerce*, House of Representatives, 66th Cong., 1st Sess. (1919).

*History of appropriation bills, second session**

BILL (H. R.) NO.	TITLE	HOUSE REPORT NO.	PASSED HOUSE	SENATE REPORT NO.	PASSED SENATE	SENT TO CONFERENCE	CONFERENCE REPORT (HOUSE) NO.	CONFERENCE REPORT AGREED TO	DATE APPROVED	LAW NO.
11223	Urgent def., hospitals and Empl. Comp. Com.	502	1919 Dec. 18		1919 Dec. 19	1920		1920	1919 Dec. 24	105
11368	Indian	522	1920 Jan. 9	395	1920 Jan. 28	Feb. 2	597	Feb. 4–5	Feb. 16	141
11578	Post Office	534	Jan. 15	461	Mar. 29	Mar. 31	802–834	Apr. 15–16	Apr. 24	187
11892	Rivers and harbors	566	Jan. 22	513	Apr. 26	May 19–21	1045	June 4	June 5	263
11960	Dipl. and Consular	571	Jan. 26	416	Feb. 10	Feb. 16	895–985–1038	May 25–27	June 4	238
12046	Second def. for 1920	584	Feb. 5	426	Feb. 20	Feb. 24	683–701	Mar. 2–3	Mar. 6	155
12272	Agriculture	596	Feb. 14	469	Mar. 26	Mar. 26–31	960–1029–1033†	May 29	May 31	234
12467	Military Academy	620	Feb. 17	456	Mar. 1	Mar. 2	754	Mar. 20–22	Mar. 30	166
12610	Legislative. (H. R. 14100 substituted)	652	Mar. 4	488	Apr. 1	Apr. 6	835–855	Apr. 22		Veto.
13108	Navy	744	Mar. 23	514	Apr. 28	Ap. 28-M. 18	1067	June 1–2	June 4	243
13266	District of Columbia	768	Mar. 30	530	Apr. 27	Apr. 29	1079–1103	June 3–4	June 5	245
13416	Pensions	788	Apr. 6	583	May 25				June 4	244
13555	Fortifications	814	Apr. 13	562	Apr. 30	May 1–3	973	May 13–15	May 21	214
13587	Army	821	Apr. 16	587	May 25	May 25–27	1100	June 3	June 5	251
13677	Urgent deficiency, railroads, etc.	852	Apr. 20		Apr. 27	Apr. 30	921	May 3–4	May 8	195
13870	Sundry civil	905	May 11	617	May 26	May 27	1084	June 2	June 5	246
14100	Legislative	997	May 17		May 19				May 29	231
14335	Third def. for 1920	1069	June 2	654	June 3	June 4		‡	June 5	264

* From the *Weekly Compendium*, June 9, 1920, p. 28. † Also S. Doc. 371.

‡ Senate receded from disagreement June 4.

Appropriations and Pensions. Thirteen regular and four deficiency appropriation bills were passed carrying a total of $4,859,327.30, of which by far the greater part was for the expenses and continuing costs of the war and preparation for possible conflicts in the future.[12] The bills were not completed until late in the session and eight were signed by the President on the two last days. The legislative history of the measures is given by the table on another page.

Not a great deal of legislation unconnected with the grants of funds was attached to the appropriation acts in the form of riders. The Legislative, Executive and Judicial Appropriation Law (Public No. 231) abolished the subtreasuries; the Agricultural Law (Public No. 234) created a joint committee to investigate the practicability of establishing a system of short-time rural credits; the District of Columbia Law (Public No. 245) changed the half-and-half system of appropriations in the district (see House Report No. 531; Senate Report No. 636)

[12] Mr. Good, chairman of the house appropriations committee, prepared the following table showing the disposition of the amounts appropriated (*Congressional Record*, June 21, p. 9470):

A. Appropriations incident mainly to past wars:		
1. Soldiers and sailors of the war with Germany for compensation for death and disability, vocational training, hospital treatment, and return of remains from France	$293,168,400.00	
2. Pensions incident to Mexican War, Civil War, Spanish-American War, and on account of regular Military and Naval Establishments	279,150,000.00	
3. Interest on the public debt	980,000,000.00	
4. Sinking fund; indefinite appropriation for the retirement of Liberty bonds and Victory notes, etc	260,800,000.00	
5. Federal operation and control of transportation systems and expenses incident to termination of Federal control	1,025,000,000.00	
		$2,838,118,400.00
B. Appropriations incident to present national defense:		
1. Military Establishment	$418,232,382.57	
2. Naval Establishment	437,724,580.00	
		855,956,962.57
C. Appropriations incident to civil functions of government:		
1. Postal Service	$497,575,190.00	
2. Appropriations for all other services of the Government not enumerated	481,744,726.50	
		979,319,916.50
D. Deficiency appropriations:		
For the fiscal year 1920 (excluding $300,000,000 for Federal control of railroads and including $85,000,000 for war-risk insurance compensation, $23,000,000 for vocational rehabilitation of soldiers and sailors, $13,166,187 for care of war-risk patients, and $14,000,000 for payment of deficit on account of Federal operation of telegraph and telephone lines)		186,495,048.20
Grand total		$4,859,890,327.30

and transferred the administration of the school teachers' retirement act from the treasury department to the district commissioners; the Sundry Civil Law (Public No. 246) authorized loans to relieve car shortage on the railroads, prohibited the shipping board emergency fleet corporation from letting contracts for additional vessels and issuing periodicals, authorized the exportation of birch timber from Alaska, and contained some miscellaneous provisions on monuments and memorials, national parks, public lands, reclamation, and the Coast and Geodetic Survey; and the Third Deficiency Law (Public No. 264; 1920) provided for the payment of the transportation costs of wives married to American soldiers in Europe.

The pension appropriations required $279,150,000. A total of $5,617,520,402.39 has now been paid by the government to pensioners. There are still 81 widows of the war of 1812—presumably very young women who married old men—and they received $17,704.[13]

Politics: The Bonus and Ireland. The shadow of the ex-soldier and Irish votes hovered over congressional deliberations, particularly in the house of representatives. "Permanent, constructive legislation" made the session "historic," if Mr. Mondell is to be believed, but this "constructive legislation" did not bother the house nearly so much as the proposed measure providing adjusted compensation for those who served in the war.

With various organizations demanding a cash bonus from a Congress whose members were shortly to stand for reëlection, it is not surprising that the house acted, yet it probably would not have had the temerity if there had been any chance of the measure receiving consideration in the senate. It was probable, however, that the upper house would not have the time or the desire to bring the bill to a vote (this was the case), and that, if it were brought up, the opposition, through a filibuster, if necessary, would force its defeat. Liberal provisions had been made for compensating and educating disabled soldiers (Public No. 104) and the anticipated economic effects of finding sources of revenue for a huge cash bonus, with the subsequent orgy of spending and higher prices, were sufficient to prevent the bill from becoming law even if a cash gift had been otherwise unobjectionable and the measure had been less of a bid for political support.[14]

[13] See 66th Cong., 2d Sess., Senate Report No. 583.

[14] Another important phase of the bonus bill will be discussed in a later article on congressional procedure.

Both houses engaged in political manoeuvering on the Irish question. The senate added a reservation to the Treaty of Versailles affirming sympathy for the aspirations of the Irish people and expressing the hope that the time was "at hand" when Ireland would have a government of its own choosing. Eighty-eight members of the house—62 Democrats and 26 Republicans—signed a message to Mr. Lloyd George protesting against the imprisonment without trial of persons arrested in Ireland for political offenses. Bills were introduced in the house to provide salaries for an American minister to and consuls in Ireland. On May 28 the house foreign affairs committee reported favorably a concurrent resolution (H. Con. Res. 57; House Report No. 1063) viewing "with concern" present conditions in Ireland and expressing "sympathy with the aspirations of the Irish people for a government of their own choice." Chairman Porter of the committee sent the resolution to Secretary of State Colby for his opinion. The latter replied that he saw "nothing to interfere" with the adoption of the resolution. It was not clear whether Secretary Colby also was thinking of the Irish vote, or whether he was willing for the Republican Congress to go ahead and play fast and loose with a question of recognition which is purely within the province of the executive. No further action was taken on the resolution, however.

The President and Legislation. The session presented a marked contrast from those of Mr. Wilson's first administration and during the war when presidential influence on legislation was very powerful. In only a very few cases did President Wilson express himself on pending legislative proposals and then, so far as positive action was concerned, his advice was not accepted. The senate paid no attention to his wishes with regard to the Peace Treaty and Congress adopted a resolution (S. Con. Res. 27; H. Doc. No. 791): "That the Congress hereby respectfully declines to grant to the Executive the power to accept a mandate over Armenia as requested in the message of the President dated May 24, 1920."

The President exercised his veto power several times, but in no case was Congress able to override it. He returned the Legislative Appropriation Bill because it limited the authority of the executive with regard to printing. Section 8 provided that no periodical publication could be issued by a government department until the authorization of the joint congressional committee on printing had been secured.[15]

[15] Congress was considerably worried by the paper shortage. The *Congressional Record* was not circulated for the last week of the session because the

"I regard the provision in question," Mr. Wilson declared, "as an invasion of the province of the executive and calculated to result in unwarranted interferences in the processes of good government, producing confusion, irritation, and distrust. The proposal assumes significance as an outstanding illustration of a growing tendency which I am sure is not fully realized by the Congress itself and certainly not by the people of the country. For that reason I am taking the liberty of pointing out a few examples of an increasing disposition, as expressed in existing laws and in pending legislative proposals, to restrict the executive departments in the exercise of purely administrative functions." Mr. Wilson instanced several regulations of the joint committee on printing and the public buildings commission,[16] which has the power to order executive departments out of the buildings they now occupy. The President also referred to the fact that when the Legislative Appropriation Bill was in the senate an amendment (later eliminated in conference) was added transferring the bureau of efficiency from the jurisdiction of the President to that of Congress.

For similar reasons President Wilson vetoed the budget bill. He objected to the provision "that the comptroller general and the assistant comptroller general, who are to be appointed by the President with the advice and consent of the Senate, may be removed at any time by a concurrent resolution of Congress after notice and hearing, when,

public printer did not have the necessary paper and the quality used throughout the session was extremely bad. On March 1 Senator Smoot gave notice that thereafter he would object to the insertion in the *Congressional Record* of any matter other than resolutions from state legislatures or city councils. The senate proceedings became freer than usual from newspaper editorials, poems, and addresses by various constituents, but even so, Senator Smoot's objections did not suffice, for senators could read the editorials and they would thus appear in the *Record*.

The joint committee on printing presented a very valuable report (Senate Report No. 265; *Congressional Record*, April 12, p. 5957) which showed that from July 1, 1916, to September 15, 1919, 30,144,362 copies of speeches by government officers (other than members of Congress) had been printed at public expense.

The treaty proceedings in the senate took up 3000 pages or 6,300,000 words. Senator Smoot "started to segregate the pages of matter that have been inserted in the *Record* at the request of senators, including newspaper articles, editorials, and letters from citizens; but it soon developed that it was altogether impossible to put them in any reasonable number of books. So it was concluded to abandon the effort." *Congressional Record*, January 31, p. 2438.

[16] This consists of two senators, two representatives, the superintendent of the capitol buildings and grounds, and the supervising architect of the treasury.

in their judgment, the comptroller general or assistant comptroller general is incapacitated or inefficient, or has been guilty of neglect of duty, or of malfeasance in office, or of any felony or conduct involving moral turpitude, and for no other cause and in no other manner except by impeachment. The effect of this is to prevent the removal of these officers for any cause except either by impeachment or a concurrent resolution of Congress. It has, I think, always been the accepted construction of the Constitution that the power to appoint officers of this kind carries with it, as an incident, the power to remove. I am convinced that the Congress is without constitutional power to limit the appointing power and its incident, the power of removal derived from the Constitution."

The house refused by a vote of 178 to 103 to pass the bill over the President's veto. The objectionable provision was eliminated and the measure passed the house, but a filibuster in the senate prevented its consideration there.[17]

President Wilson, as was expected, vetoed the resolution declaring a separate peace with Germany (H. J. Res. 327),[18] and killed by a pocket veto the resolution (H. J. Res. 373) terminating the emergency legislation of the war, with the exception of food control, District of Columbia rents, and the trading with the enemy act.

A very interesting question as to the President's power over legislation was raised when President Wilson signed eight bills after the adjournment of Congress. Fifty-one laws were signed on the last day of the session. It may have been that the executive was unable to give his approval to those signed later or that he wished to raise the question of his power. The usual practice, with Congress rushing laws through madly during the closing hours of the session, makes the President choose between hasty approval or pocket vetoes. Announcement of the innovation was made from the White House on June 18:

"The President having been advised by the Attorney General in a formal opinion that the adjournment of Congress does not deprive him of the 10 days allowed by the Constitution for the consideration of a measure, but only in case of disapproval of the opportunity to

[17] It is very doubtful whether the President's theory of the inability of Congress to limit his power of removal is correct. See an article by T. R. Powell, "The President's Veto of the Budget Bill," *National Municipal Review*, September, 1920.

[18] House Report 801, April 6, 1920. Passed house April 9. Senate Report 568, April 30. Passed senate May 15. House concurred in senate amendments May 21. Vetoed by the President May 27. H. D. No. 799.

return the measure with his reasons to the House in which it originated, has signed the following bills, each within the 10-day period, of course. The bills not signed failed to become laws under the usual practice."[19]

There would seem to be no reason of policy or constitutional law why this post-adjournment signature is not valid.[20]

With reference to the Merchant Marine Law referred to above (p. 663), Secretary of State Colby announced on September 25, that the President had decided not to carry out the provisions of Section 34. This directed the termination of treaties which forbade the imposition of discriminating duties on foreign vessels and foreign borne imports entering American ports. "The Department of State," the announcement said, "has been informed by the President that he does not deem the direction, contained in section 34 of the so-called merchant marine act, an exercise of any constitutional power possessed by the Congress."[21]

Control of the Purse. Congress passed a bill creating a budget system which, as has been explained, was vetoed by the President on the ground that it unconstitutionally limited his power of appointment by seeking to prevent it from including the power of removal. The measure will doubtless pass at the next session and to prepare for its operation the house of representatives changed its rules so that all appropriation laws will be considered by the committee on appropriations. This is to consist of 35 members and will do the work of the

[19] The bills referred to as having been signed following adjournment of Congress were: H. R. 3184, water-power bill creating federal power commission. (Public 280.) H. R. 6407, for relief of Michael MacGarvey. (Private 73.) H. R. 13962, bridge, Monongahela River, Pa. (Public 283.) H. R. 13976, bridge, Allegheny River, Pittsburgh, Pa. (Public 284.) H. R. 13977, bridge, Allegheny River, Milvale, Pa. (Public 285.) H. R. 13978, bridge, Ohio River, McKees Rocks, Pa. (Public 286.) S. 547, to authorize enlistment of non-English speaking citizens and aliens in Army. (Public 281.) S. 4167, bridge, Mississippi River, St. Louis, Mo. (Public 282.)

The bills not signed and failing to become laws "under the usual practice" (pocket vetoes) are: H. R. 13329, surplus road machinery bill. H. J. Res. 373, repeal of war laws. S. J. Res. 152, Canadian wood pulp resolution.

The water power law is dated June 10, the others June 14.

[20] See the writer's article, "The Power of the President to Sign Bills after Congress has Adjourned," *Yale Law Journal*, November, 1920.

[21] On the respective power of the President and Congress with regard to the termination of treaties, see Corwin, *The President's Control of Foreign Relations*, p. 109 ff. It should be said, however, that a strong argument can be made in support of greater authority than Professor Corwin concedes the executive and even as to the legality of President Wilson's action in refusing to obey section 34 of the merchant marine law.

8 committees which now report 13 supply bills.[22] The new rules also provide that if a bill comes back from the senate with amendments granting funds not already authorized by law,[23] the conference report shall not "be agreed to by the managers on the part of the house unless specific authority to agree to such amendment shall be first given by the house by a separate vote on every such amendment."[24]

[22] At the present time the appropriations committee handles the Legislative, Executive and Judicial, the Sundry Civil, Fortifications, the District of Columbia, and Pensions bills; the military affairs committee, two bills for the Army and the Military Academy, and the Agricultural, Foreign Affairs, Naval, Post Offices, and Indian Affairs Committees have authority to report appropriations for these purposes. Under clause 56 of rule 11 of the House of Representatives, the river and harbors committee has the authority to report (at any time) "bills for the improvement of rivers and harbors." This is changed by the new rules so that the committee has the right to report "bills authorizing the improvement of rivers and harbors." The power to report appropriations is thus taken away.

[23] This is at present prevented by rule 21, clause 2.

[24] On May 27, 1920, the senate amended its rules so that, instead of having 17 or 19 members (in the case of the appropriations committee it is 20) as at the present time, all the principal committees of the senate will consist of 15 members. The others will consist of 11, 9, and 7 members. Rule 25 of the standing rules of the senate. See *Congressional Record*, May 27, p. 8335.

LEGISLATIVE NOTES AND REVIEWS

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Legislative Resolutions and Memorials. The Constitution of the United States guarantees to the people the right to petition the government for a redress of grievances, and this right is frequently exercised by the various states through the agency of the legislatures. Many resolutions represent a genuine and state-wide sentiment prevalent among the various constituencies; others represent merely a local or racial sentiment which for political reasons a legislature is unwilling to ignore; and all are ostensibly designed to influence Congress on questions of domestic and foreign policy. During the legislative sessions of 1919 over 300 resolutions and memorials were adopted, of which 206 are of general public interest and 117 on questions of local interest.

League of Nations. The legislatures of Arkansas, South Carolina, Tennessee, Texas and Nevada adopted resolutions indorsing the League of Nations without specifically stipulating any reservations;[1] Arizona adopted two resolutions, one merely indorsing the league and the other indorsing it "relatively as presented" and "to the utmost degree consistent with the safeguarding and preservation of our national sovereignty."[2] Tennessee likewise adopted a resolution condemning those senators who opposed the league and indorsing Wilson for its first president, and New Jersey offered to provide a meeting place for the league.[3] Idaho and West Virginia adopted resolutions opposing and condemning the league.[4] Arizona, Arkansas and Tennessee adopted resolutions approving the judgment and expressing confidence

[1] Arkansas, *Session Laws*, 1919, pp. 494, 501 and 515; Tennessee, *Session Laws*, 1919, pp. 826 and 873; Nevada, *Session Laws*, 1919, p. 479; Texas, *Session Laws*, 1919, p. 361, Second Called Session, 1919, p. 454.

[2] *Session Laws*, 1919, pp. 378 and 383.

[3] Tennessee, *Session Laws*, 1919, pp. 789 and 875; New Jersey, *Session Laws*, 1919, p. 706.

[4] Idaho, *Session Laws*, 1919, p. 614; West Virginia, *Special Session Laws*, 1919, p. 47.

in the President's international policies.[5] Tennessee, Texas and Alabama approved the fourteen points as a basis of international settlement, and both Tennessee and Oklahoma approved the President's trip to Europe.[6]

National Self-Determination. Sympathy for the various small nationalities was expressed in resolutions adopted by a number of states. Illinois, California, Montana and Nevada adopted resolutions urging that the Irish be given a hearing at the Peace Conference;[7] Illinois and Pennsylvania urged that the Italians be heard at the Peace Conference relative to the restoration of lands formerly belonging to Italy and necessary for its economic development, including Venetia, Julia, Fiume and Dalmatia.[8] Illinois, Pennsylvania and Tennessee adopted resolutions requesting the United States government to investigate the alleged persecution of the Jewish people in Poland, Ukraine and Rumania, and favored the establishment of a Jewish commonwealth in Palestine in accordance with the declaration of the British government of November 2, 1917; and the granting to the Jewish people in every land all rights and privileges enjoyed by other citizens or subjects.[9] Oregon urged the establishment of a republic for the Armenians.[10]

Aliens and Immigrants. Alabama adopted a resolution favoring the restriction of immigration from Europe, especially from the enemy countries.[11] Kansas favored the passage of a naturalization law binding the immigrant to be law abiding, that he would not withdraw from the obligation thus taken and that in time of need he would bear arms.[12] Minnesota adopted a resolution urging the establishment of a system whereby a prospective immigrant would be examined by a representative of the United States government in his home country at least

[5] Arizona, *Session Laws*, 1919, p. 377; Arkansas, *Session Laws*, 1919, p. 513; Tennessee, *Session Laws*, 1919, p. 761.

[6] Tennessee, *Session Laws*, 1919, p. 824; Alabama, *Session Laws*, 1919, p. 3; Oklahoma, *Session Laws*, 1919, p. 482; Texas, *Session Laws*, 1919, p. 361.

[7] Illinois, *Session Laws*, 1919, p. 1008; California, p. 1461; Montana, p. 641; Nevada, p. 481.

[8] Illinois, *Session Laws*, 1919, p. 1009; Pennsylvania, p. 1226.

[9] Illinois, *Session Laws*, 1919, p. 1010; Pennsylvania, pp. 1224, 1232, 1234, 1235; Tennessee, pp. 754, 807 and 877.

[10] *Session Laws*, 1919, p. 831.

[11] *Session Laws*, 1919, p. 58.

[12] *Session Laws*, 1919, p. 454.

three months before his departure.[13] California urged the passage of a law prohibiting any immigrant from entering the United States except upon the presentation of a certificate from his own government showing that he is of good moral character and a law abiding person; upon his entry into the country, the immigrant would be required to take an oath to support the government and to report once every six months by submitting the testimony of two reputable citizens that he has complied with the obligations of his oath.[14] Oregon, Idaho, California, Florida and Montana demanded the passage of laws providing for the deportation of all aliens who withdrew their declarations of intention to avoid being drafted into the army or who violated the espionage act; the cancellation of their naturalization papers; and prohibiting alien enemies from engaging in business of any kind, and prohibiting undesirable aliens from becoming citizens.[15] In the Oregon resolution the names of the aliens who withdrew their declarations of intention are given.

Soldiers, Sailors and Marines. Numerous resolutions were adopted relating to the welfare of soldiers, sailors and marines of the World War, including such questions as the establishment of farm homes, providing a bonus, assigning uniforms, the speedy discharge and demobilization, adjusting homestead entries, return of the bodies of soldiers from Europe, unemployment and the adjustment of the war risk insurance. Alabama, Arizona, Arkansas, California, Illinois, Indiana, Texas, and West Virginia adopted resolutions urging Congress to pass the measure recommended by Secretary Lane appropriating $100,000,000 to place returned soldiers on farms;[16] Colorado adopted a resolution urging Secretary Lane to open to settlement, especially in the interests of soldiers, the Southern Ute Indian lands in La Plata and Archuleta counties;[17] and Idaho favored a broad policy in reclaiming lands for the purpose of giving employment to soldiers.[18] Five states adopted resolutions urging Congress to provide that all discharged soldiers and sailors be permitted to retain their uniforms and over-

[13] *Session Laws*, 1919, p. 769.

[14] *Session Laws*, 1919, p. 1540.

[15] *Session Laws*, 1919, Florida, Regular Session, p. 343; Idaho, pp. 589 and 607; California, p. 1548; Montana, p. 648; and Oregon, p. 867.

[16] *Session Laws*, 1919: Alabama, p. 68; Arizona, p. 379; Arkansas, p. 508; California, p. 1446; Illinois, p. 1014; Indiana, p. 285; Texas, Regular Session, p. 372; West Virginia, p. 513.

[17] *Session Laws*, 1919, p. 768.

[18] *Session Laws*, 1919, p. 597.

coats;[19] and twelve states urged the awarding of a bonus of $200 or three or six months' pay.[20] Arizona urged the discharge from the army first of men who were married and had wives and children to support, and seven other states favored the speedy return of the troops from Europe and the demobilization of those still in the training camps.[21] Three states requested that local divisions be demobilized at some point within the state after having been paraded in one of the larger cities;[22] six states requested the war department to supply enough cannon captured from the Germans to make badges for all soldiers from the state who participated in the war, or to be placed in the state house grounds or in some public park as at the state soldiers' home, or the state armories.[23] Three states adopted resolutions urging Congress to recognize the local boards in some suitable way and commending Congress for passing Senate Joint Resolution No. 204 extending to members of local and district boards, government appeal agents and members of medical and legal advisory boards the thanks of Congress for services rendered under the selective draft act and authorizing the President to appoint by brevet commissions the members of such local and district boards and to present them with appropriate medals.[24] Idaho and Montana urged Congress to grant soldiers the right to apply their period of service in the war on the prescribed residence required to secure a homestead claim.[25] Other resolutions adopted urged Congress to direct the army and navy to furnish to each state a list of the names of the persons from that state mustered into the service;[26] protesting against the honorable discharge of conscientious objectors with

[19] *Session Laws*, 1919: Arizona, p. 397; Idaho, p. 605; Pennsylvania, p. 1220; Montana, p. 643; Tennessee, pp. 792 and 842.

[20] *Session Laws*, 1919: Illinois, p. 1014; Kansas, p. 455; Minnesota, p. 758; California, p. 1437; Alabama, p.26; Pennsylvania, p. 1236; Montana, p. 635; Oregon, p. 866; Tennessee, pp. 792 and 842; Nebraska, p. 63; South Carolina, p. 659; Indiana, pp. 869 and 871.

[21] *Session Laws*, 1919: Arizona, p. 399; Alabama, p. 57; Illinois, p. 1003; Minnesota, p. 762; California, p. 1541; Pennsylvania, pp. 1225, 1220; North Dakota, p. 101; Texas, p. 363.

[22] *Session Laws*, 1919: Illinois, p. 1018; Kansas, pp. 457 and 473; Texas, p. 366.

[23] *Session Laws*, 1919: Idaho, p. 616; West Virginia, p. 519; California, pp. 1480 and 1539; Pennsylvania, p. 1223; Oklahoma, p. 483; Oregon, p. 871.

[24] *Session Laws*, 1919: Colorado, p. 763; Pennsylvania, p. 1221; and Tennessee, p. 794.

[25] *Session Laws*, 1919: Idaho, p. 585; Montana, p. 623.

[26] Idaho, *Session Laws*, 1919, p. 596.

full pay;[27] indorsing the American Legion;[28] urging the passage of the Kenyon Bill No. 5397 providing for the commencement of public works to provide employment for soldiers during the period of demobilization and readjustment;[29] to include Spanish War veterans in the distribution of government lands;[30] increasing the pensions of maimed soldiers of the Civil War, and to pension all veterans of the Spanish-American War;[31] to return the bodies of soldiers from Europe, and amendment of the law authorizing soldiers to continue their war risk insurance by paying quarterly, semi-annual or annual premiums; and increasing the allowance under the war risk insurance act;[32] and the passage of laws to remedy the distress of unemployed soldiers.[33]

Education. Colorado, Minnesota, Montana, Oregon and Tennessee favored the pending bills providing for the creation of a department of education and the coöperation of the states and the federal government in matters of education; the bills making available for industrial and other cripples the same advantages for retraining and rehabilitation as are afforded to soldiers wounded in the line of duty, and guaranteeing federal aid for their reëducation and placement; providing for the education of illiterates and the Americanization of immigrants by federal aid and coöperation with the several states; providing for a bureau of citizenship and Americanization; and providing for the equalization of educational opportunities and raising the pay of rural teachers.[34]

Federal Retirement Annuities. California and Oregon favored the passage of the pending bill providing retirement annuities for federal employees upon reaching the age of 68 years.[35]

Woman Suffrage. The legislatures of thirteen states (including Arizona, California, Idaho, Illinois, Indiana, Kansas, Minnesota, Montana, Nebraska, Nevada, Oregon, Texas and Wyoming) adopted

[27] Idaho, *Session Laws*, 1919, p. 611.

[28] Illinois, *Session Laws*, 1919, p. 1005.

[29] West Virginia, *Session Laws*, 1919, p. 518.

[30] California, *Session Laws*, 1919, p. 1453.

[31] Pennsylvania, *Session Laws*, 1919, pp. 1222 and 1233.

[32] *Session Laws*, 1919: Oklahoma, 1919, pp. 472 and 482; Texas, Second Called Session, 1919, p. 452.

[33] Oregon, *Session Laws*, 1919, p. 841.

[34] *Session Laws*, 1919: Colorado, p. 773; Minnesota, p. 759; Montana, pp. 645 and 650; Oregon, pp. 866 and 881; Tennessee, p. 777.

[35] *Session Laws*, 1919: California, p. 1438; Oregon, p. 835.

resolutions urging Congress to pass the federal woman suffrage amendment.[36]

Return of Railroads. Idaho, Alabama, Montana, Oregon and Tennessee petitioned Congress to provide for the return of the railroads and other public utilities to private ownership.[37]

Freight Rates. Illinois and Indiana adopted resolutions favoring the reduction of freight rates on building material; and Montana favored a reduction in homeseeker's rates from all eastern points.[38]

National Highways. Arizona urged the construction of an ocean to ocean highway along the route most suitable for military purposes. Nevada, Oregon, Pennsylvania, Tennessee and Wyoming favored the establishment of a federal system of highways.[39]

Cotton. Alabama, Georgia, Oklahoma, Tennessee, Florida and South Carolina adopted a resolution urging the planters of the South to hold their spot cotton until the price had advanced; recommending the removal of the embargo on cotton; providing for the establishment of American steel steamship lines between the Gulf and South Atlantic and foreign ports; prohibiting the importation of Egyptian cotton; and urging Congress to take the necessary action to regulate the New York and New Orleans cotton exchanges to prevent unjustifiable fluctuations.[40]

Guaranteed Price of Wheat. Oklahoma and Montana urged that the guaranteed price of wheat for 1919 crop be kept at $2.26, and protested against changing the limit of the guaranteed price from December 31 to October 31, 1919.[41]

War Minerals. Several of the western, metal-producing states adopted resolutions urging Congress to provide for compensation for those persons who had sustained losses due to the overproduction of

[36] *Session Laws*, 1919: Arizona, p. 378; California, p. 1392; Idaho, p. 585; Illinois, p. 1020; Indiana, p. 845; Kansas, p. 451; Minnesota, p. 757; Montana, p. 640; Nebraska, p. 65; Nevada, p. 474; Oregon, p. 864; Texas, Regular Session, 1919, p. 363; Wyoming, p. 271.

[37] *Session Laws*, 1919: Idaho, p. 600; Alabama, p. 23; Montana, p. 627; Oregon, p. 886; Tennessee, p. 771.

[38] *Session Laws*, 1919: Illinois, p. 1015; Indiana, p. 847; Montana, p. 654.

[39] *Session Laws*, 1919: Arizona, p. 397; Nevada, p. 489; Oregon, p. 887; Wyoming, p. 279; Pennsylvania, p. 1229; Tennessee, p. 848.

[40] *Session Laws*, 1919: Alabama, pp. 25 and 50; Florida, Regular Session, p. 355; Special Session, 1918, p. 113; Georgia, pp. 497 and 500; Oklahoma, p. 487; Tennessee, pp. 743 and 809; South Carolina, p. 660.

[41] *Session Laws*, 1919: Oklahoma, p. 470; Montana, p. 637.

certain minerals used in carrying on the war, including manganese, chromite, tungsten, pyrites and chrome.[42]

Bimetallism. Colorado and Nevada urged Congress to petition the Peace Conference at Versailles to provide for the adoption of the bimetal standard of money for all nations.[43]

Lower California. Arizona and California adopted resolutions urging Congress to take the necessary steps to purchase of the Republic of Mexico, the state of Lower California, the Coronado Islands, and 10,000 square miles of the state of Sonora lying north of 31° 20′ north latitude.[44]

Influenza. Alabama and Oklahoma urged Congress to appropriate funds ranging from $250,000 to $2,000,000 to investigate the causes of and eradicate the "flu."[45]

Miscellaneous.[46] The miscellaneous resolutions adopted urged Congress to enact the necessary legislation to continue nitrate development at Mussel Shoals, Tennessee; to change the name of the Panama to the Roosevelt Canal; to reimburse shippers for grain shipped in sacks; to provide that federal aid for post roads not expended during any year may be available for the following year; to create a national forest in Thunder Mountain county, Idaho; to prevent discrimination in long and short haul freight rates; to so modify the federal game laws and regulations as to provide an open season for ducks and geese from February 15 to March 31; the repeal of the daylight saving law; the development of a constructive forestry policy, in coöperation with the states, to insure the continuance of the timber supply; to open the Assawoman Canal from Chincoteague, Virginia, to Lewes, Delaware; urging economy in national expenditures; imposing a tariff on zinc to protect the domestic supply; the improvement of the Chesapeake and Ohio Canal to relieve freight traffic; the passage of a grain grading bill

[42] *Session Laws*, 1919: Montana, pp. 625 and 630; Oregon, p. 865; Nevada, p. 477; and Colorado, p. 776,

[43] *Session Laws*, 1919: Colorado, p. 774; Nevada, p. 483.

[44] *Session Laws*, 1919: Arizona, p. 389; California, p. 1440.

[45] *Session Laws*, 1919: Alabama, p. 105; Oklahoma, p. 472.

[46] *Session Laws*, 1919: Alabama, p. 168; Idaho, pp. 586, 593, 595, 598 and 612; Illinois, pp. 1000, 1001 and 1012; Delaware, p. 675; Kansas, pp. 447, 464; Maryland, 1918, p. 1021; Minnesota, pp. 760, 761, 763 and 764; Wyoming, p. 274; West Virginia, pp. 503 and 43, Spec. Session; California, pp. 1439, 1441, 1451, 1452, 1478, 1489, 1490, 1501 and 1538; Georgia, pp. 509 and 1428; Oklahoma, p. 473; Montana, pp. 629, 631 and 646; Oregon, pp. 873, 882 and 888; and Nevada, p. 480; Indiana, p. 851; Florida, pp. 357, 343, 357, 360; Texas, pp. 378, 372.

and a modification in the present grades of grain; coöperation with Canada in canalizing the St. Lawrence river for the passage of ocean-going vessels; prescribing the standards of motor gasoline according to the specifications as recommended by the committee on standardization of petroleum in their report of October 2, 1918; indorsing the federal free employment service; indorsing the campaign for funds for the relief of Armenian, Syrian, Greek and other war sufferers; the passage of laws permitting the use of the United States army to preserve order and suppress insurrections in the states; opposing the cancellation of the war loan to the Allies on the theory that the enemy countries should pay; the cancellation of contracts for ships let to foreign ship yards to give jobs to demobilized soldiers; the appointment of a river regulation commission to coördinate river regulation projects; the passage of stricter legislation for the examination of national banks; the development of the merchant marine to secure wider markets and the provision for adequate housing for workers employed in the shipbuilding industry; recommending a state inheritance tax on estates up to $5,000,000 in value and a federal tax on those above that amount; the restoration of the two cent ad valorem tariff tax on rice; trial before an international tribunal of persons of any rank who perpetrated crimes against noncombatants or violated international usages during the war; an international peace jubilee celebration in 1920 at Balboa Park, San Diego; to provide for the hydroelectric development of streams; the payment of pensions to Confederate soldiers on the same basis as Union soldiers; the return to the South of the tax collected on raw cotton between 1860 and 1867; urging the federal government not to interfere with intrastate telephone rates; opposing the passage of House Resolution 13324 which could be construed as government ownership of packing plants; the punishment and suppression of anarchists and revolutionary elements; the development of a merchant marine to handle the products of the Pacific coast; authority to take contracts for building ships for foreign countries; the passage of measures to prevent unemployment; and provision that an interstate carrier may be exempt from federal liability if it chooses to come under the provisions of the workmen's compensation act of the state; indorsing universal, compulsory military training; repeal of the act dividing the country into postal zones with graduated rates on newspapers; the establishment of engineering experiment stations in the several states to promote industrial and engineering research; and the enactment of federal reclamation legislation.

Coöperative Associations. In an effort to encourage the producer and the consumer of economic utilities to organize for mutual benefit, five state legislatures enacted in 1919 laws authorizing the organization of coöperative associations. Kentucky did likewise in 1918. Various names are included in the caption "Coöperative Association," namely: Coöperative Corporation, Society, Company, Exchange, Union. Pennsylvania requires the use of the word "Coöperation" in the name of the association and forbids all partnerships and corporations from so using the word "Coöperative" or any derivative thereof, unless such organization has been formed as a coöperative association according to the provisions of the act. Kentucky and Oklahoma provide similar prohibitions.

These coöperative associations may be organized in Wisconsin for the purpose of conducting any agricultural, dairy, mercantile, mining, manufacturing or mechanical business on the coöperative plan, and of acting as a selling agency for its members or patrons.[1]

Nebraska includes in coöperative associations organizations organized by producers or consumers, or jointly by producers and consumers, for the purpose of collective bargaining, marketing and purchasing, or other coöperative business activity, where the net profits of the association, after paying the cost of operation and capital charge, shall be distributed to the membership, not on a basis of capital investment, but on a basis of patronage.[2] Nebraska also authorizes the distribution of its earnings in part or wholly on the basis of, or in proportion to, the amount of property bought from or sold to members, or members and the other patrons, or if labor be performed or other services rendered to the corporation. Kentucky's authorized coöperative plan is a business concern that distributes the net profit of its business by: First, the payment of a fixed dividend upon its stock; Second, the remainder of its profits are prorated to its several stockholders or customers, or both, as provided by by-laws, upon their purchases from or sales to said concern or both such purchases and sales.[3]

Missouri allows the coöperative plan to have all the incidents, powers, and privileges of corporations, for the purpose of conducting any agricultural or mercantile business on the coöperative plan, including the buying, selling, manufacturing, storage, transportation, or other handling, by associations, of agricultural, dairy, or similar products,

[1] Wisconsin, *Session Laws*, 1919, ch. 371.
[2] Nebraska, *Session Laws*, 1919, p. 161.
[3] Kentucky, *Session Laws*, 1918, p. 662.

and including the transportation of such articles and their manufacture into products derived therefrom, and for the purpose of purchasing of or selling merchandise to all shareholders and others.[4]

Pennsylvania authorizes only coöperative agricultural associations instituted for the purposes of mutual help and not having a capital stock and not conducted for profit. In such associations are included dairying, livestock raising, poultry raising, bee keeping, and horticulture.[5]

Oklahoma includes livestock and irrigation. Pennsylvania provides that any member shall forfeit his membership upon proof being made to the association that he has ceased to be engaged in agriculture, dairying or horticulture.

In order to incorporate as a coöperative association under the Missouri laws it is required that there shall be paid into the state treasury a fee of fifty dollars for the first fifty thousand dollars or less, of capital stock, and the further sum of five dollars for each additional ten thousand dollars of its capital stock.

No shareholder in any coöperative association in Missouri may own shares of a greater aggregate par value than ten per cent of the aggregate par value of all shares of stock of such associations. In Oklahoma coöperative association stock must not be sold at less than its par value. Twenty per cent of the par value of the stock subscribed for must be paid in before the corporation commences business.[6]

The minimum number of persons who may incorporate as a coöperative association in Kentucky is three; in Pennsylvania and Wisconsin, five; in Missouri, twelve; and in Nebraska, twenty-five. Kentucky requires that the association shall be managed by not less than three directors, while Pennsylvania and Missouri requires at least five such officials.

Nebraska also authorizes the organization of coöperative credit associations, to be conducted upon the same general principle as the ordinary coöperative associations.

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State Legislation, 1920. A special issue of the *Bulletin* of the Public Affairs Information Service, for September 25, 1920, contains an index of state legislation passed during the present year. This includes the

[4] Missouri, *Session Laws*, 1919, p. 116.
[5] Pennsylvania, *Session Laws*, 1919, p. 466.
[6] Oklahoma, *Session Laws*, 1919, p. 211.

laws passed in nine states (Georgia, Kentucky, Maryland, Massachusetts, New Jersey, New York, Rhode Island, South Carolina and Virginia), of eleven in which regular sessions were held, and in four states (Idaho, Kansas, Washington and Wyoming) of the eighteen in which special sessions were held. Little legislation of importance resulted from the special sessions, many of which were called to act on the woman suffrage amendment to the Constitution of the United States.

Among the subjects of important legislation may be noted: intoxicating liquors (in Kentucky, New Jersey, New York and Rhode Island); rents (in Georgia, Massachusetts, New Jersey and New York); state aid to returned soldiers (in Massachusetts, New Jersey, New York, Rhode Island, Washington and Wyoming); and syndicalism (in Kansas and Kentucky).

NOTES ON MUNICIPAL AFFAIRS

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Charter Revisions and Home Rule. Perhaps the most important proposed charter amendment to come before city voters at the November election of this year is that contained in the measure submitted by the Massachusetts legislature providing for the amendment of the charter of Boston. The act changes the composition of the city council, composed at present of nine members elected at large, by providing for a council of fifteen members to be elected by districts, the entire council to be chosen every two years. The measure is opposed by the leading civic organizations of the city, such as the Good Government Association, Boston Charter Association, and the chamber of commerce. It has the support of both the Democratic and Republican organizations, who anticipate that a restoration of party-machine control will be facilitated both by the renewal of the entire council with the election of the mayor every four years and by the district system of electing councilmen.

The charter of Galveston, the oldest "commission charter," was radically amended at a recent election at which twenty-six amendments were adopted. The more important amendments make the following additions and changes in the charter: establishing the recall for all elective offices, the initiative, and the referendum; empowering the city commission to regulate rates, fares and services of public utilities, and to compel interchange of services by the various utilities; authorizing the commission to increase salaries of municipal employees, to establish the eight-hour shift in the police department and the two-platoon system in the fire department, and to install a system of workmen's compensation for municipal employees generally; changing the office of assessor and collector of taxes from an appointive to an elective office.

Under the constitutional amendment adopted in Maryland in 1915, authorizing any county to frame and adopt its own charter, a commission was elected in November, 1919, to draft a charter for Baltimore

county. The county of Baltimore does not include within its boundaries the city of Baltimore; but it embraces many unincorporated urban communities within which all local functions—including such distinctly municipal services as fire and police protection, sewage disposal, public health administration—are administered by the county government. In May of this year the charter commission reported a county-manager charter, substantially similar to the city-manager plan. Powers of local discretion, in defining the general scope of powers and determining the number and type of county officials, are somewhat restricted under the home rule amendment, which perpetuates all officers (with the exception of the county commissioners) created by the constitution or general laws, and confers upon the legislature the authority to define the powers of counties which frame their own charters. This preserves independent of the local charter the sheriff, state's attorney, treasurer, surveyor, clerk of court, register of wills, and, of course, the judicial officers; but the sheriff (by a recent act of the legislature) has been deprived of many of his former administrative powers. The legislature in 1918 passed a law which confers upon counties which adopt their own charters a broad grant of legislative and administrative powers with respect to most affairs of local concern. The proposed charter for Baltimore county provides for: (1) a council of fifteen members chosen by districts, with nonpartisan nomination and election and with a term of three years, one-third of the members to retire each year; (2) a county manager chosen by the council for an indefinite term, with a salary of $5000 which the council may raise to $6500; (3) three administrative departments, the heads to be elected by the council upon nomination by the manager, for a term of four years; (4) removal of the manager or heads of departments at any time by two-thirds vote of the members of the council. The charter, if adopted, will introduce the first county-manager system in the country. It is opposed by the stronger local party organizations.[1]

The committee of fifteen, appointed in 1916 by action of twenty representative civic organizations of Cleveland to investigate and report upon the city-manager plan for Cleveland, presented majority and minority reports in November, 1919. The majority report, signed by ten members, recommends, in main essentials, the model charter of the National Municipal League providing for a city manager and a council elected by proportional representation. The council would

[1] Cf. H. W. Dodds, "A County Manager Charter in Maryland," in *National Municipal Review*, August, 1920, pp. 504–513.

consist of from fifteen to twenty members chosen from a few large districts from each of which would be elected, by a system of proportional representation, from five to nine councilmen; the city manager would be chosen by, and serve at the pleasure of, the council, and would have the power of appointing all department heads, except the law director and the city auditor. The minority report, signed by five members of the committee, preserves the independent mayor of the present charter, makes him ineligible to succeed himself, and confers upon him power to choose the city manager, who would serve during the mayor's pleasure; the manager would have direction of the several administrative departments, except the offices of city solicitor and auditor, who would be appointed directly by the mayor. The reports contain interesting arguments in support of their respective plans. Apparently no further progress has been made recently in the movement for a new charter for Cleveland.

Discussion of the borough system of organization has recently been taken up in Cleveland. For some years past intermittent efforts have been made in some manner to consolidate with the parent city the cities and villages contiguous to Cleveland. Agitation in the past has shown two separate trends: one, the simple annexation of these suburban communities, making of them new city wards, or portions of existing wards; the other, a plan of city-county consolidation contemplating rather sweeping changes and effecting a complete unification and centralization of government for all existing local units. Neither movement has gone much beyond the introduction of enabling legislation in the proper legislative bodies. With the coming into office on May 1, 1920, of the present mayor, Hon. W. S. FitzGerald (succeeding Mayor Davis, who resigned to enter the race for governor), has come the proposal of the borough idea as a solution of the problem. In the past the outlying corporations could not be interested in the proposition of coming into Cleveland under any plan that would cause them to lose their identity in the greater Cleveland. The borough plan has been tentatively advanced by the mayor as affording a way of preserving their local identity and yet making these communities a part of Cleveland so far as the general functions of government are concerned. The matter of the actual division of powers between the proposed borough governments and the general city government has not been discussed in detail as yet. The mayor has arranged conferences with the executives of the principal suburban corporations at which the views of each have been expressed. The fact that these

suburban executives are willing to confer is deemed hopeful by many friends of a greater Cleveland. The mayor is said not to favor the New York borough plan, deeming it too complicated. The suburbs on their part will oppose strenuously the surrender of any large body of powers to the central government. These apparently divergent positions will require skillful adjusting if the plan in any form is to be brought to fruition.[2]

A circuit court in Michigan has recently declared unconstitutional the provision of the charter of Kalamazoo establishing the Hare system of proportional representation in the election of city commissioners. The decision was rendered in a *quo warranto* suit brought by a man who had been an unsuccessful candidate for election under the system. The ground for the decision was the opinion of the judge that the section of the state constitution (III. 1) declaring that every person possessing the designated qualifications "shall be an elector and entitled to vote" implies that each such person is entitled to vote for every officer for which he is qualified to vote, whereas under the charter provision in question the ballot of any voter is counted for one candidate only, although seven candidates are to be elected; and another section of the constitution (VIII. 8) provides expressly that "no city or village shall have power to abridge the right of elective franchise."

The cities of Vancouver and Victoria, British Columbia, have adopted the Hare system of proportional representation for the election of their councils. Vancouver (with a population of about 100,000) is the largest city in America using this system. In January of this year the Hare system was used for the first time generally in Irish municipal elections.

Among larger cities which have recently adopted the city-manager form of government are the following: Lynchburg, Petersburg, Newport News, and Hampton, Virginia; Tallahassee, Florida; Dubuque, Iowa; Moskogee, Oklahoma; Watertown New York; Beaumont, Texas; Colorado Springs; Pontiac, Michigan. Under the new census figures, Akron, Ohio, where the city-manager form went into operation on January of this year, is now, with a population of 208,000, the largest city-manager city. The secretary of the city-managers' association reported in April of this year that the total number of cities having the city-manager system in some form was 180. Of this number, 115 have "standard commission-manager charters," the others having

[2] This paragraph was supplied by Mr. L. E. Carter, director of the Cleveland Bureau of Municipal Research.

introduced the office of manager without adopting the commission-manager system in all its typical features. Interesting data on these cities, relating to population, type of city-manager form, etc., is given by the secretary in the April and May issues of the *National Municipal Review*.

In Sacramento, which has operated under the commission form for eight years, a charter providing for the city-manager form is voted on at the election this month. If approved by the voters and ratified by the state legislature which meets in January it will go into effect on July 1, 1921.

Among the amendments submitted by the Nebraska constitutional convention which adjourned in March (and adopted in September) is one which simplifies the process whereby cities of 100,000 (including Omaha alone) may acquire a "home-rule" status as to scope of powers and future change of charter. The amendment makes it possible for Omaha to acquire that status by a simple vote on the question, without the necessity of resorting to the machinery for adopting a new charter.

In Minneapolis the electors are voting at the election this month upon the question of assuming home rule. A charter commission, appointed by the district court, has decided not to frame a new charter, but merely to bring together the charter enacted by the state legislature thirty years ago, with the later amending laws, rearrange these in systematic form, and submit the whole to the voters. The voters can thus, by approving this document, acquire the power to amend their charter in the future without depending upon legislative action.

The city of Detroit has recently established an important innovation in its judicial machinery. In place of the two former more or less independent courts—the police court, of three judges, having jurisdiction of misdemeanors, and the recorder's court, of two judges, having jurisdiction of felony and city ordinance cases—there now exists a single criminal court, to be known as the recorder's court, which possesses all kinds of criminal jurisdiction. This change is expected materially to reduce the delays and uncertainties inherent in the former system, which secured for professional criminals comfortable respites; this protection, under the old system, came, in felony cases, from the provision for preliminary hearing in the police court and trial in the recorder's court; in misdemeanor cases, from the provision for trial in the former court with right of appeal and new trial in the recorder's court. The bill was bitterly fought in the 1919 session of the state legislature, and the opponents secured some modifications of the original

bill, one of them requiring reference of the bill to the voters of Detroit. Following a keenly contested popular campaign, the act was approved at the election held April 5 of this year by a vote of 106,132 to 30,617. It is expected that with the unified criminal court there will be to some extent a functional division of jurisdiction whereby the different judges will specialize in certain classes of cases, such as domestic relations or traffic cases. A psychopathic clinic is to be conducted in connection with the court. The Citizens' League of Detroit, which has taken the lead in other recent civic movements in the city, was the chief factor in securing the success of the movement for this court. In devising its plan for the unified court it obtained the assistance of the American Judicature Society.

Street-railway Problems. One of the most perplexing problems now confronting city authorities in all parts of the country is that created by the condition of the street-railway industry. In the numerous conflicts in connection with urban transportation troubles all sides usually agree that the electric railway industry is not at present performing the public function assigned to it. The difficulties are well known: many systems, in large urban centers, in the hands of receivers, others on the verge of insolvency; shrinkage in the values of street-railway securities, and impairment of credit; labor troubles; neglect of needed extensions; inadequate service. These conditions have been evolving during several years, have developed numerous critical issues among owners, employees, city authorities, and city electorates, and have given occasion to various investigations, plans and reports. Some of the more typical or significant recent developments in connection with transit problems in various localities are noted in the following paragraphs.

Unusually interesting features are presented by the recent course of events in Toledo, Ohio. During the past decade the city and the Toledo Railways and Light Company have been engaged in frequent disputes in connection with negotiations as to fares and renewal of franchise grants. The company has been operating without a franchise since the final expiration of its franchises in March, 1914. The development of events since that date has been marked by many bitter issues and some freakish turns. For a period in 1914 some passengers paid the five-cent fare demanded by the company, while others, by offering the three cents ordered by city ordinance, rode free because of the refusal of conductors, obeying orders of the company, to accept the

latter amount. Following decisions by the United States district court that the three-cent fare ordinance was confiscatory and that as long as the company had no franchise the city lacked authority to fix fares, the company was able to collect fares fixed by itself. After the company had raised fares several times the city decided to deny to the company the use of its streets. An ouster ordinance was passed in 1919 to go into effect July 31. The ordinance was prevented from going into effect on that date by a referendum petition requiring submission of the ordinance to popular vote at the November, 1919, election. At that election the ordinance was sustained by the narrow majority of slightly over 800 in a total vote of about 40,000. A few days later, before any action had been taken or threatened by city officials to enforce the ordinance (in fact, according to the statement of city officials, following their assurance to the company that no immediate steps would be taken), the company startled the administration and the public by withdrawing its cars from the city and the state during the night, explaining that they regarded the ouster ordinance as self-enforcing. Then, following a statement from the court that it could not order the company to restore its cars until the council should take some action to permit the use of the streets by the company, the council, early in December, amended the ouster ordinance by postponing its operation until April 1, 1920, provided that the company should immediately resume operation at the rate of fare in effect at the time of the withdrawal. Thereupon the company, upon order of the court, resumed service under those conditions. Next, the council, at the suggestion of the court, authorized the court to appoint a commission to consider the whole situation and work upon drafts of alternative ordinances for submission to popular vote, one to provide for municipal ownership and operation and one for a new franchise based upon the service-at-cost principle; the commission to be divided equally in composition between those favoring the two respective policies. The latter branch of the commission, after several months work in frequent conference with the president of the company, failed to produce any ordinance, because of inability to reach any agreement with the company upon the issue of valuation, and upon some other points.

The municipal ownership branch of the commission, in order to determine the powers of the city, instituted a suit in the state courts to test the authority of a city to issue bonds for the purchase of a street-railway or other transportation system, the issue being whether, under the provision of the constitutional "home-rule amendment"

(which authorizes cities to "acquire, construct, own, lease and operate within or without its corporate limits, any public utility the product of which is or is to be supplied to the municipality or its inhabitants") a city, under a provision of its own charter empowering its governing body to issue bonds upon its general credit for the purpose of acquiring a street-railway or other public utility, may issue bonds for such purpose in the absence of specific authority from the legislature; in other words, the issue was, whether the provision of the constitution which reserves to the legislature the authority to limit the city's power to levy taxes and incur debts, makes invalid any step by a city to issue bonds for a purpose not specifically authorized by law. In March the state supreme court in a unanimous opinion decided in favor of the city, holding that the legislature has control only over the total amount of indebtedness which a city may incur and has no control over the purposes for which bonds may be issued. "Municipalities of the State are empowered by constitutional provisions to acquire any public utility the product or service of which is to be supplied to the municipality, and they may issue bonds to raise money for such purpose, pledging the general credit of the municipality to their payment within the limitations prescribed by the legislature as to amount of indebtedness for local purposes. No legislative grant of power is essential." A significant point in the decision is that which authorizes a city having a home rule charter to issue general credit bonds.

In May this same branch of the commission made an extensive report to the council, stating its reasons for recommending municipal ownership of the transportation system of the city, and submitted an ordinance providing for a bond issue for the purpose. The council finally submitted two bond issues: one provided for an issue of $3,000,000 for acquiring a transportation system: the plan being to have the city purchase the more desirable parts of the company's system; the other provided for an issue of $4,000,000 for constructing a transportation system, the object being to enable the city to construct new lines, purchase new rolling stock, and establish a motor bus system. The two ordinances were submitted at the primaries, August 10, and both were defeated, the former by vote of 8534 for to 12,468 against, the latter, 7901 for and 11,543, against; this result thus affording another instance of the practice under which voters will at one election approve the policy of municipal ownership and at a subsequent election disapprove the financial provision for carrying the policy into effect.[3]

[3] See *Toledo City Journal*, August 14, 1920, p. 363.

The company likewise had meanwhile experienced a characteristic change of heart. Spurred probably by the menace of public ownership, it had modified its former position on the valuation issue and agreed to accept the service-at-cost franchise on the basis of an $8,000,000 valuation, substantially as drawn by the private ownership branch of the commission. The council has voted to submit at the election this month both the service-at-cost franchise and again the two bond issues rejected in August. The former provides for a twenty-five year franchise, with enlarged city control over services.[4]

In Detroit the street-railway situation is especially marked by the extreme inadequacy of its transportation system, which has been standing still for several years while the city has been increasing in population with exceptional rapidity. On two occasions the voters of the city have recorded their approval of municipal ownership of the street railways by ratifying the present charter provision directing the city to "at once proceed to, and as soon as practicable acquire or construct and own, maintain and operate a street railway system" which as soon as practicable "shall be made exclusive." And twice plans for the purchase of the system have been defeated at the polls. Finally, at an election held April 5 of this year a plan of municipal ownership prepared by Mayor Couzens was adopted. The plan calls for a bond issue of $15,000,000 to be used for the construction and operation of new lines. Work in executing this plan has been retarded through injunction suits filed by the Detroit United Railway; but, the first spike in the municipal street railway was driven by Mayor Couzens on August 23. The mayor in turn has, through the police, impeded the efforts of the company to proceed with extension of its lines on certain streets.

Seattle occupies the unique position among large cities of the United States in being the only one which owns and operates practically the entire street-railway system of the city. After several years of contention between the company and a hostile city government, the company, despairing of receiving satisfactory treatment from the city during the remaining years of its franchises (which would not have expired until 1934), agreed, late in 1918, to sell out to the city, under terms now considered to have been very favorable to the company. The city paid $15,000,000 in utility bonds, which are payable, in instalments for twenty years, out of, and are a first lien upon, the earnings of the utility. The first three months of municipal operation, which began

[4] The three ordinances are printed in full in the *Toledo City Journal*, August 28.

on April 1, 1919, showed substantial profits with some extension of services. The succeeding months have shown steadily mounting deficits, with expanding expenditures due to wage increases and rising prices of materials and supplies. The mayor has instituted an investigation of the facts incident to the purchase of the system, in order to discover evidence, if any, to support charges that misrepresentation and other improper means had influenced the transactions. There have been several recent fare increases under municipal ownership, the latest embodied in an ordinance passed in June of this year providing for a ten-cent cash fare or four tickets for a quarter; the mayor considers this to be inadequate. This experience of Seattle is being watched with considerable interest by students of municipal government, because of what it may indicate as to the expediency of muncipal operation of street railways in this country; although it is generally conceded that the Seattle experiment has probably been undertaken under unfavorable circumstances.

In St. Louis and Pittsburg, in both of which cities the street railways are now in the hands of receivers, agitation of the question of municipal ownership has been stimulated by the conspicuously inadequate and unsatisfactory services being rendered by the companies in these localities, and by disclosures as to excessive over-capitalization and bad financing by the companies. The Civic League of St. Louis has initiated a campaign for municipal ownership of the street railways of that city. In Pittsburg the situation has been somewhat complicated by the recent decision of the public service commission, which, in fixing the valuation of the street-railway properties, used, as a basis, unit costs for the years 1914 to 1918—years of exceptionally high costs. The resulting valuation is at such a high figure that advocacy of municipal ownership on that basis would be considerably handicapped in a popular campaign. On the other hand, there are indications that the private interests concerned would not be adverse to a sale to the city on the basis of the valuation fixed by the commission. Efforts to secure legislation by the Pennsylvania legislature of last year to enlarge the powers of Pittsburg by giving it powers to acquire street-railway facilities by condemnation (a power possessed by Philadelphia) met with failure.

A report by the National Municipal League's committee on public utilities, entitled "A Correct Policy Toward the Street Railway Problem," has been issued as a supplement to the *National Municipal Review* for April, 1920. It is a revision and enlargement of the original

draft presented at the annual meeting of the league in Cleveland, December, 1919. Dr. Delos F. Wilcox is chairman of the committee. This report contains summaries of all previous reports of the league on the subjects of public utilities, franchises and municipal ownership. The present report analyzes the problems involved in what it considers to be the menace of the present situation, characterized by speculation, interruption and curtailment of services, with increased fares affording only temporary and partial relief, and conflict between state and local regulation—in short a break-down of private management, on the one hand, and, on the other hand, an absence of definite and constructive policies on the part of the public authorities. The report squarely recommends the policy of public ownership and operation of street-railway transportation. It also indicates the problems that need to be taken up at once, relative to the formulation of definite policies and the preparation of definite plans for the consummation of municipal or state ownership.

The federal electric railways commission, appointed by President Wilson in May, 1919, to investigate conditions of the electric railway industry, submitted its report on July 28 of this year. The commission was composed of eight members representing the following, respectively: members of public utility commissions, electric railway owners, street-railway employees, investment bankers, mayors, and the United States departments of commerce, labor, and the treasury. Its investigation covered questions of franchises, rates, taxation, management, public relations and regulation, labor conditions,—all in relation to actual conditions, causes of conditions, and necessary readjustments. The commission being broadly representative, the present report,[5] comprising discussion and recommendations and signed by all the members, appears to be carefully balanced and constructive, although, in the words of the report itself, it "necessarily represents decided concessions by some of its individual members." On the issue of public or private ownership the report recommends the continuance, "for an extended period," of private ownership and operation (under proper regulation and with further trial of the cost-of-service plan), with public ownership as an ultimate alternative policy and also as a legally possible present alternative so as to safeguard public interests under private ownership. Its "conclusions and recommendations" on this subject are, in part, as follows: "Cost-of-service contracts are in the experimental stage,

[5] The report is published in full in the *Electric Railway Journal* for August 28, pp. 398–411.

but, where tried, they seem to have secured a fair return upon capital, established credit, and effected reasonably satisfactory public service. Such contracts may safely be entered into where the public right eventually to acquire the property is safeguarded." "The right of the public to own and operate public utilities should be recognized, and legal obstacles in the way of its exercise should be removed." "While eventually it might become expedient for the public to own and operate electric railways, there is nothing in the experience thus far obtained which will justify the assertion that it will result in better or cheaper service than privately operated utilities could afford if properly regulated." A complete report of the testimony taken by the commission is to be printed and distributed to leading libraries, all regulating commissions, and mayors of leading cities. The great majority of witnesses who appeared before the commission as representatives of the electric railway companies favored the cost-of-service franchise.

At the conclusion of the commission's hearings it engaged Dr. Delos F. Wilcox to digest and analyze the testimony taken by the commission and make suggestions with reference to its report. Dr. Wilcox made a comprehensive analysis of the testimony and recommended public ownership as the proper policy indicated by the testimony. The commission has not published Dr. Wilcox's report; but it has announced that a summary, prepared by him, is to be printed with the report of the testimony. Dr. Wilcox has recently distributed to the press a lengthy statement criticising some aspects of the commission's report, analyzing the results of recent fare increases upon traffic and revenues, and arguing for public ownership and operation as the only adequate solution of the street-railway problem.

Several developments have occurred in Cleveland during the past year under the famous Tayler service-at-cost franchise. In December, 1919, following increased revenues during the preceding three months, a reduction in street car fares from 11 tickets for 50 cents to 6 tickets for 25 cents was announced. In January of this year, the city council amended the original franchise so as to permit a seven instead of six per cent return on the capital stock. Late in August the president of the railway company announced that, because of recent decrease in net revenues, fares will be automatically increased to the maximum provided in the franchise—6 cents fare, or 9 tickets for 50 cents, with charge of one cent for transfers. A proposed bond issue of $15,000,000, urged by the Cleveland rapid transit commission, to enable the city to build a subway traction terminal under the public square, with

feeders from four directions, was defeated by a two to one vote at an election in April.

A proposed cost-of-service franchise for the Minneapolis State Railway Company, whose present fifty year exclusive franchise will expire on July 1, 1923, was defeated by over 7,000 votes in the election in November, 1919. The chief grounds of objection were the alleged excessive valuation provided in the proposed franchise and the alleged excessive return provided, seven per cent. There is some local fear that, in view of the present unsatisfactory service and the repeated failures of the city and company to come to terms, the legislature of 1921 may establish state regulation of transportation in Minneapolis.

A valuable report on service-at-cost franchises has recently been issued as a legislative document by the state of New York, under the title—"Service-at-cost franchises in effect in America. An identical analysis of plans in effect in Cleveland, Montreal, Boston, Dallas, Cincinnati, Youngstown, and on the Eastern Massachusetts Street Railway Company and the Westerville Division of the Columbus [O.] Railway, Power and Light Company, and the General Massachusetts Service-at-cost Law."[6] A useful report on the operation of the service-at-cost franchise in Cincinnati was issued in August by the director of street railways of that city. Rochester, New York is one of the latest cities to adopt this form of franchise. It recently entered into such an arrangement with the company which operates the street railways of that city. The agreement is to extend for a period of two years subject to renewal if desired by the city. The agreement concedes to the city extensive control over services, extensions, and betterments, this control to be exercised by a commissioner of railways appointed by the mayor at a salary of $12,000 to be paid from the revenues of the street railways. Under this franchise an advance to a 7 cent fare, with 6 tickets for 26 cents, was put into effect on August 28. In Akron, Ohio, negotiations looking to a service-at-cost franchise are under way between the city authorities and the street-railway company.

Two important reports on the transit situation in New York City have been issued during the past year. A report prepared by Dr. Wilcox and signed by thirty-three other men interested in municipal affairs in New York City, bears the title "Transit Problems of New York City: an analysis of the difficulties in the way of the continuation of the policy of private ownership and operation, and of the obstacles to be removed in preparation for successful public ownership and

[6] Legislative Document No. 96, 1920. 157 pp.

operation." The title reveals the policy recommended in the report; but the difficulties—legal, financial, and political—involved in that solution are carefully canvassed. "The Traction Crisis in New York" is the title of a report written by Dr. Charles A. Beard. This report analyzes the difficulties of the present situation, considers the various ways of relief, and proposes a "settlement promising permanent relief." The proposed settlement would continue private ownership and operation, but under a reorganization which would secure: (1) unified operation and regulation, (2) a tentative franchise, with capitalization limited to *bona fide* expenditures to create property, (3) assurance of a fair return on honest capital, (4) division of profits, above a reasonable return, between company and city, (5) preparation of the way to municipal ownership on definite terms when desired by the city.

The *National Municipal Review* has during the past year continued its articles dealing with recent street-railway developments, under the title of "The Fate of the Five-cent Fare." Recent articles describe street-railway history in San Francisco, Toronto, Detroit, Indianapolis, Minneapolis, Pittsburgh, and Seattle.

The city commission of Nashville, Tennessee, has recently passed an ordinance prohibiting the operation of one-man street cars in that city. The demand for such an ordinance came chiefly from the labor unions.

In June of this year the Cleveland city council adopted an ordinance providing strict regulation of motor bus transportation. The ordinance requires: (1) a liability insurance policy to be taken out by a company or person operating motor busses—a policy of $60,000 for operating one or two busses, and $30,000 additional (with $1,000 more of property liability) for each additional bus; (2) license fees from both owners and drivers; and (3) that fixed routes be named before issue of an owner's license.

Housing and Rent Problems. The widely prevailing housing shortage and rental difficulties in cities have produced a variety of activities, by public and private agencies, in the way of investigation, relief, and control. Various studies have been made to discover facts and remedies as to rent profiteering and means for bringing about a resumption of normal building. The municipal reference library of New York City has recently published a useful bibliography on "Rent Profiteering," by Miss R. B. Rankin. Organizations have been formed in several cities to provide assistance for families of limited means,

to enable them to buy or rent homes under terms less burdensome than those now generally prevailing. An example of this sort is the Bridgeport (Conn.) Housing Company, organized by merchants, manufacturers, and bankers, with a capital of a million dollars, limiting its earnings to six per cent. It has built group houses, providing homes for sale at from $3350 to $5400—payable ten per cent down and one per cent a month thereafter, or for rent at from $18.50 to $46 a month.

Significant experiments have been made in the way of state and municipal governmental activity to meet the critical situation produced by constant rent increases and the ejectment of tenants. Effective work in assisting in the solution of the rent problem has been done by the rent and housing committee of Boston, appointed by Mayor Peters and organized in March of this year, to adjust differences between landlords and tenants and study housing needs generally. In carrying out the former purpose this commission has already achieved results in over a thousand cases, through securing compromises, persuading owners and tenants to adjust their own differences, obtaining extensions on vacate notices, referring some cases to boards of health, fire department, or police department, finding vacant houses, and in other ways.

The legislature of Massachusetts recently passed an act authorizing any city to appropriate money for the erection of homes to be sold to families in need of homes. The city of Boston has taken steps to resort to that means of solving the problem, attempts in that city to create a private housing corporation having failed.

Several cities have adopted the policy of increasing assessments on real estate properties in cases where landlords make extortionate rent increases. This plan was recently followed in Detroit where members of the city council act also as members of the board of tax review.

In July, 1919 the legislature of Wisconsin amended its general corporation law in such way as to enable individuals to organize coöperative housing companies and to authorize city councils and county supervisors to subscribe preferred stock in such corporations and, in this way, engage in housing activities. The law places a limit of $5000 upon the cost of any single dwelling built by such a company; prohibits sale of land except in case of winding up the affairs of the corporation or of closing mortages or liens or of disposing of land not needed; prohibits lease of property except to, and for the use of, a stockholder (with certain exceptions as to ex-soldiers); limits the stock of any tenant to the value of the premises occupied by him; limits dividends to five per cent; and provides for the prompt retirement of pre-

ferred stock. The act is based on the recommendations of the Milwaukee housing commission.

As many cities have been looking to the so-called "Ball rent law"[7] (passed by Congress in October, 1919, for the District of Columbia) as a model for ordinances to check rent profiteering, the decision of the court of appeals of the District of Columbia in June of this year, declaring that law to be unconstitutional, is of considerable interest. The act, declaring that, for the purposes of this act, all rental property is affected with a public interest, created a rent commission of the District of Columbia, composed of three members holding office for the life of the commission, which was fixed at two years by the law. Under the act this commission is empowered: (1) to deal with controversies over rents,—to fix fair and reasonable rents and grant permission, and determine rental, for sub-leases; and (2) to deal with possession cases, with power to prescribe standard forms of leases and, under certain conditions, extend tenancies beyond the expiration of leases. The act forbids eviction of a tenant except upon one of three grounds: (1) failure of tenant to pay rent or to perform other valid conditions of the lease or contract; (2) desire of the landlord to repair or tear down the property in order immediately to construct new rental property approved by the commission; (3) desire of landlord to secure the property for *bona fide* occupancy by himself, his family or dependents. The commission has handled a large number of cases, has compelled reduction of rents in many cases, adjusted many controversies without formal hearings, and decided many possession cases.

The case in which the Ball act was declared unconstitutional arose through the suit of a purchaser of a property to secure possession from the tenant whose lease had expired. The court of appeals, to which the plaintiff appealed after the trial court had given judgment for the defendant, held the act to be invalid on the ground that it denies the right of trial by jury in property disputes, impairs the obligation of contracts, and is not a proper use of the police power of Congress. It held that the renting of property in the District of Columbia is a private business which can not be impressed with a public interest merely by legislative fiat or by an arbitrary exercise of the police power. Chief Justice Smyth in a dissenting opinion held that the business of renting property in the district, because of the extraordinary circumstances created by the war, resulting in rental

[7] This forms part of the Food Control and District of Columbia Rents Act, 66th Cong. 1st Sess. ch. 80. Approved October 22, 1919.

conditions dangerous to public health and embarassing to public business, is affected with a public interest. The commission appealed to the United States Supreme Court, which, on technical grounds, declined a writ of error. However, the commission has been able to continue to function, because of a provision of the law which, in effect, empowers it to continue its work pending a final decision by the Supreme Court. Meanwhile the acts of the commission are still subject to review by the courts, and a decision may soon be rendered which can form the basis of an appeal to the highest court.

The rent laws enacted by the New York legislature in the spring of 1920 have attracted widespread attention. The legislature, following a special message of Governor Smith, passed eleven laws, which went into effect April 1. These laws apply to first-class cities and to Westchester county. The more significant provisions of these measures are as follows: where summary eviction is sought on the ground that a tenant is objectionable, burden of proof is shifted from the tenant to the landlord; where the duration of a lease is not specified in the agreement it shall extend until October 1 following occupancy; where a landlord has increased the rent by more than twenty-five per cent over the rent of the previous year, the tenant may set up as a defense, in an action for payment of rent, that the new rent is unreasonable and oppressive, the court then determining what in the particular case is a reasonable rent for the landlord; where a tenant can prove to the satisfaction of the court that he has sought to secure suitable premises and has failed through no fault of his own, the court may in its discretion grant a stay of not more than twelve months; where there is a monthly leasing agreement, thirty days notice to vacate, instead of twenty, is required; willful failure of a landlord to provide "natural and normal service," such as water, light, heat, elevator operation, is made a misdemeanor punishable by a fine of $1000 or one year's imprisonment or both; the law empowering a lessee or owner to recover double penalty where a tenant holds over without the former's consent, is repealed.

Experience under the New York laws has not been long enough to give basis for conclusions as to the wisdom of the measures. Hardly any one seems to consider them at all adequate to meet the chief difficulties of the situation. Although they have apparently mitigated some phases of the evils of rent profiteering, they have, in the opinion of some, tended to postpone fulfillment of the chief need, namely, active resumption of building dwelling houses on a large scale. Opponents

of the laws argue that because they permit rentals of dwellings to be fixed otherwise than according to the law of supply and demand, they discourage investment in apartment houses and other residences.

A special session of the legislature convened in September upon the call of the governor, to deal further with the critical housing situation. At this session were enacted several measures recommended by the joint legislative committee on housing, the most important being: (1) giving local authorities power to exempt from local taxation new buildings to be used exclusively for dwellings, the exemption to apply to construction completed since April 1, 1920, or commenced before April 1, 1922, and completed within two years, and to continue not longer than until January 1, 1923; (2) striking out the 25 per cent increase in rent permissible under the laws passed at the regular session, and permitting a tenant, sued for non-payment of rent, in all cases to set up as a defense that the rent demanded is unreasonable, whereupon the burden is to be upon the landlord to prove by authenticated statements of income and cost of maintenance that the rent demand is not unreasonable; (3) forbidding eviction of a tenant by a landlord except upon one of the three grounds indicated above in the description of the "Ball rent law"; (4) permitting the state and municipalities to invest sinking funds in state land bank bonds.

A movement has been started in Atlanta, Georgia, to obtain from the legislature an amendment to the city charter authorizing the creation of a municipal rent commission with power to fix equitable rents. The city council of Toronto has decided upon the appointment of a housing commission and upon the construction of 500 dwellings for sale or rent; the houses will be sold to laborers, to whom loans up to fifty per cent of the cost will be made.

The legislature of North Dakota in 1919 enacted a law providing direct state aid for home builders in both urban and rural sections. Under the law the North Dakota Home Builders' Association has been established; $100,000 has been appropriated to the association; and another law provides for the issue of bonds to cover first mortages on real estate. The association is operated by the state industrial commission, which is authorized to acquire by lease or by exercise of the right of eminent domain all necessary property rights, and to construct and remode[1] buildings for the purpose of selling them to private owners. The commission fixes the rates on both deposits and loans, the rate not to exceed six per cent per annum.

Organizations and Publications. Several changes have been made recently affecting the National Municipal League and the *National Municipal Review*. Dr. Harold W. Dodds, formerly of Western Reserve University, has been made secretary of the league, succeeding Clinton Rogers Woodruff, who resigned in December, 1919, after twenty-five years service in that office. Mr. Dodds is now also one of the editors of the *Review*. The official headquarters of the league and the *Review* have been moved from Philadelphia to 261 Broadway, New York City. Dr. A. R. Hatton has been made field secretary of the league. R. M. Goodrich, legal member of the staff of the Detroit Bureau of Governmental Research, has been made editor of the "judicial decisions" department of the *Review*. The *Short Ballot Bulletin*, which for about ten years had been published bimonthly by the National Short Ballot Organization, ceased publication with the April issue, and was consolidated with the *National Municipal Review* in the May issue of the latter. Beginning with the February issue, the *Review* has contained a special section devoted to the "City Manager Movement," edited by Harrison Gray Otis, secretary of the City Managers' Association, and presenting information as to the progress of the movement and the experiences of cities operating under that system. The annual meeting of the National Municipal League will be held in Indianapolis, November 17–19; discussion of the league's model state constitution will form part of the program.

The eleventh annual meeting of the New York State Conference of Mayors and other city officials was held in Jamestown in July.

In February a bureau of municipal research was established in Cleveland, under the auspices of the Welfare Federation of Cleveland, the board of trustees of which selects the controlling committee of the bureau. Mr. Leyton E. Carter, formerly assistant-secretary of the Civic League of Cleveland, is director of the bureau. Mr. G. A. Gessell has been made secretary of the Civic League, succeeding Mr. C. A. Dykstra, who in May resigned that post to become executive secretary of the Chicago City Club.

The special joint committee on taxation and retrenchment, of the New York legislature, has recently made a report embodying the results of its investigation into the problem of the cost of city government.[8] It gives eight causes for the increased cost and makes eleven recommendations for retrenchment. Besides recommendations on such sub-

[8] *Taxation and Retrenchment: Report of the Special Joint Committee.* State of New York, Legislative Document No. 80, 1920, 155 pp.

jects as those of budgets, pensions, purchasing, taxation and assessment, and educational administration, it makes definite recommendations with respect to the general structure of municipal government, advocating the centralization of all executive functions under a single executive officer directly responsible to the electors, and the conceding of a wide latitude to local authorities in prescribing internal departmental organization.

A municipal reference library has recently been established by the Toledo commission of publicity and efficiency, which is an agency of the city government. The librarian of the city library has made the office of the commission a branch library for books on municipal government and related subjects; in addition the commission collects pamphlet materials, reports and magazines relating to municipal matters. The *Toledo City Journal*, a weekly periodical which has been published by the commission for about five years, is one of the most useful among municipal journals. A bureau of municipal efficiency and economy has recently been established in Sacramento, Calif. This commission is composed of thirty unsalaried members appointed and removable at pleasure by the city commission. Its duties are "to investigate both the social and economic conditions and the efficiency and best management of the city, with a view to promote the economy and efficiency of its administration." The Alameda *Municipal Journal* is one of the newest municipal publications. It is to be published monthly and distributed free to every home in the city. Its declared object is to keep each resident "posted, in readable form . . . . on the work and progress of the various departments functioning under the city government."

Public Business—the bimonthly publication of the Detroit Bureau of Governmental Research—contains in its issue for July 15, 1920, a useful "partial list of citizen and semi-official organizations" devoted, in part, to investigation and reporting upon problems of governmental —municipal, primarily—organization and administration.

Miscellaneous Items. In April of the year Mayor Hoan, the wellknown Socialist mayor of Milwaukee, was reëlected. At the same election 14 Socialists and 17 nonpartisans were elected to the council.

An interesting recall election was recently held in Charlotte, North Carolina, and brought out the largest number of voters that had ever taken part in a municipal election in that city. The movement for the recall was in first instance instigated by an anti-administration

element who took advantage of the dissatisfaction of two limited groups of the population—one charging the mayor and commissioners with having neglected to display proper vigor in preserving order during strikes at the cotton mills, the other disgruntled because of the adoption by the administration of a plan for stricter sanitary regulation of milk distribution within the city. Later the troubles in connection with a strike of street-railway employees gave the recall movement a different turn. The action of the administration in this strike aroused the opposition of organized labor, which now took the lead in furthering the recall movement. This latter circumstance turned the issue into one of law and order, with the result that the mayor and commissioners were retained in office by large majorities.

The new council of Philadelphia, acting under powers conferred by the new charter, appointed early in this year a new civil service commission. The members appointed are Clinton Rogers Woodruff, chairman; Lewis H. Van Dusen, who had served as civil service commissioner during the administration of Mayor Blankenburg; and Charles W. Neeld, a business man. The commission has been engaged in the work of devising a plan of classification and salary standardization. It has employed an expert staff to assist in this work.

The city service commission of Milwaukee is conducting a salary survey, under the direction of the secretary of the commission and the director of the citizens' bureau of municipal efficiency. Efforts will be made to make the new salary schedule, to be proposed, conform essentially to the Jacobs salary standardization plan of 1918. The pension committee for Milwaukee, appointed in 1919 under authority of an act of the legislature, is formulating its plan for the pensioning of all employees of the city, and expects to present its complete report to the city council in December. If approved by the council, it will be submitted to the state legislature for enactment into law. Under the tentative scheme now under consideration by the commission, with frequent consultation with advisory committees of city employees, there will be no common pension fund, but an individual fund for each employee, made up in each case from assessments upon the employee supplemented by contributions from the city treasury; and there will be provision for pensions for widows and children and disability payments.

Columbus, Ohio, Jersey City, New Jersey, and Somerville, Massachusetts are cities which have recently adopted the two-platoon system in their fire departments.

St. Louis and Baltimore furnish two interesting instances in the extension of municipal activity in the dramatic and musical field. The city government of St. Louis, with the coöperation of numerous business and civic organizations, provided a season of open-air opera last summer. The city constructed an attractive stage and seating system in a natural amphitheatre in one of the city parks, and well known light operas of the better sort were given. The city of Baltimore has recently established a municipal community theatre on its municipal recreation pier. It is to be financed by the city government, and folk plays and American plays for children and adults are to be given at popular prices.

Milwaukee has definitely adopted the policy of a civic center for the grouping of public buildings. An ordinance embodying the project, promoted by the City Club and various other civic and labor organizations, was submitted by initiative petition at the April election and was adopted by a three to one vote. It is not at present intended to abandon any existing public buildings, but only to locate new buildings, county and city, as they are needed, upon the area selected for the center. The board of public land commissioners, which is at work upon a general city plan, is now planning a survey of the area to determine locations for the various buildings. Condemnation eventually of about eleven city blocks is involved in the plan for the civic center.

The city council of Toledo has recently enacted a drastic billboard ordinance which, following closely the Chicago ordinance (sustained by decisions of the Illinois supreme court and the United States Supreme Court in 1917), prohibits the erection of billboards in residence districts without the consent of the owners of a majority of property fronting on the street; the ordinance contains general regulations as to safety of construction and requires that a permit be secured from the commissioner of inspection for the erection of each billboard.

An important instance in the extension of municipal ownership is the recent acquisition by the city of Omaha, Nebraska, of the gas plant in that city. The proposal to purchase the plant (having been defeated in 1907) was adopted by popular vote in May, 1918. The condemnation court made its report in February of this year, fixing the price to be paid to the gas company at $4,500,000; and the city commissioners have subsequently taken over the plant at that figure. The plant is operated by a bi-partisan board of directors, who also operate the municipal water plant. Omaha is the largest of the one hundred or more cities in the United States now operating gas plants.

NEWS AND NOTES

Personal and Miscellaneous

EDITED BY FREDERIC A. OGG

University of Wisconsin

The editor of this department of the Review will be glad to receive items suitable for publication from any member of the American Political Science Association, or from other readers. Such matter should be sent in before the middle of the second month preceding publication.

The headquarters of the American Political Science Association during its coming meeting at Washington, December 28–30, will be at the New Willard Hotel. The headquarters of the American Historical Association will be at the same hotel. The program of the Political Science Association's sessions will be distributed to members early in December. The chairman of the committee on local arrangements is Dr. Leo S. Rowe, of the Pan American Union.

Mr. Alpheus H. Snow, of Washington, D. C., died on August 1 in a New York hospital. Mr. Snow was an active member of the executive council of the American Political Science Association from 1915 to 1918. He was at the time of his death a member of the executive board of the American Society of International Law and of the American Bar Association. His principal interest was international law and politics.

Professor C. D. Allin, after some months of travel and study in Europe, has resumed his work at the University of Minnesota.

Mr. W. B. Ryland, of Middlebury College, has been appointed professor of political science at Hamline University.

Mr. John M. Gaus, who recently completed his work for the doctor's degree at Harvard University, has been appointed instructor in political

science at Amherst College. Mr. Gaus has been a fellow at the South End House in Boston, and has served with the War Labor Policies Board and with the New York State Reconstruction Commission. During the past year he was a tutor in government at Harvard. At Amherst he has charge of the courses in state and local government.

Mr. William E. Butt, assistant professor of history and political science in the University of Kentucky, has accepted a position in the reorganized department of political science at Pennsylvania State College. His place at Kentucky has been filled by the appointment of Mr. J. C. Jones, of the graduate school of Columbia University.

Mr. Frank M. Russell, of the University of Washington, has been appointed acting assistant professor of political science at Stanford University.

Professor Amos S. Hershey, after a two-year leave of absence, has resumed his work in the department of political science at Indiana University. Professor Hershey served as a technical adviser to the American peace commission at Paris.

Dr. A. J. Lobb, assistant professor of political science at the University of Minnesota, has discontinued teaching and has been made comptroller of the university.

The following men have been appointed instructors in political science at the University of Pennsylvania: C. V. Wolfe, formerly principal of the Urbana High School, Urbana, Ohio; W. L. Godshall, transferred from the department of anthropology at Pennsylvania; L. W. Lancaster, formerly of the department of history at Pennsylvania; M. L. Faust, recently connected with the Gettysburg Academy; A. F. Saunders, recently an assistant in political science at Wisconsin; and R. B. Watson, a recent student at Pennsylvania.

Mr. R. C. Journey has resigned his assistant professorship of political science at the University of Missouri to accept a professorship of political science and economics at Cornell College, Mt. Vernon, Iowa.

Mr. Robert L. Howard has been appointed instructor in political science at the University of Missouri.

Mr. Thomas L. Barclay, formerly instructor in political science at the University of Missouri, is pursuing graduate studies at Columbia University.

Mr. Frederic H. Guild, who has been the statistician in the Indiana legislative reference bureau since September, 1919, has resigned to accept an instructorship in political science at Indiana University.

Mr. Otto Kirchner, president of the Detroit Bureau of Governmental Research, and former president of the Governmental Research Conference, died at his home in Detroit, July 21.

Mr. G. A. Gissell, a graduate of the University of Wisconsin, and recently engaged in civic work in the Northwest, has been appointed secretary of the Cleveland Civic League succeeding Mr. C. A. Dykstra.

The department of history and political science at the University of Kansas has been divided into two departments. Professor Blaine F. Moore has been appointed chairman of the department of political science. Mr. A. A. Long, secretary of the Kansas League of Municipalities, is giving courses in municipal government in the department this year.

Dr. E. M. Sait, formerly assistant professor of politics at Columbia University, has been appointed professor of political science at the University of California. Professor Sait was lecturer in political science at California during the spring semester.

Dr. Edward Elliott, professor of international law and politics at the University of California, has returned to that institution after a two-year leave of absence. During this period he has done special work for the federal reserve bank of San Francisco.

Dr. J. R. Douglas, of the University of California, has been promoted from instructor to assistant professor of American government and administration. As director of the bureau of public administration, he has been conducting a survey of the state administration of California to determine to what extent scientific research is employed by the various agencies. This study is being made on behalf of the National Research Council of Washington, D. C.

Dr. Leonard P. Fox, assistant professor of political science at Carnegie Institute of Technology, Pittsburgh, has been appointed director of the research bureau of the Pennsylvania State Chamber of Commerce, with headquarters at Harrisburg.

The following members of the American Political Science Association were appointed to represent the association on the New York City committee which aided the Sulgrave Institution in carrying out the Tercentenary Pilgrim Celebration, September 27–30: C. A. Beard, J. P. Chamberlain, R. S. Childs, H. W. Dodds, Mayo Fesler, M. E. Loomis, T. R. Powell, Albert Shaw, Munroe Smith, and C. C. Williamson.

Dr. Walter F. Dodd, formerly secretary-treasurer of the American Political Science Association, has opened an office in Chicago for the general practice of law.

A School for Social Service Administration has been established at the University of Chicago under the direction of Professor L. C. Marshall. In consequence, the Chicago School of Civics and Philanthropy, incorporated in 1908 by Graham Taylor, went out of existence at the close of the summer term.

The Bureau of Municipal Research at Akron, Ohio, has undertaken a complete survey of county government with a view especially to obtaining data for use in the preparation of county budgets.

Lafayette College has received an endowment for the purpose of establishing and maintaining a new professorship of civil rights.

A course in the problems of citizenship has been established at the University of Missouri and is required of all freshmen in the university. This course consists of three lectures a week throughout the year on the fundamentals of the social sciences, and two additional meetings each week, in sections, in which the students write themes on the subject matter of the course. These themes serve as the basis for instruction in English. The purpose is to combine the freshman work in English with a general course in citizenship, to which students in their first year in the university will devote one-third of their time. The lectures in the course are being given by Dean Isidor Loeb.

The New Mexico Taxpayers' Association has completed a study of the cost of state and local government as a preliminary step in arriving at the proper needs of the state and its institutions and in ultimately devising a revenue code that will fully meet such needs. All the resources of the association have been placed at the disposal of a special state revenue commission provided for at the last session of the legislature. In addition, representatives of the association visited the various counties and cities of the state and coöperated with representatives of the state tax commission in assisting local officers with the preparation of their budgets, and in determining tax levies for the ensuing year.

The New York Bureau of Municipal Research has in hand studies on the following subjects: assessment and valuation of real property in American cities; budget-making and financial administration in state government; revision of legislation relative to form, contents, and preparation of the budget of New York City; housing problems in American cities; New York City charter revision; "pay-as-you-go" policy (a study based on the experience of New York City); public health educational methods; and taxation of public utilities.

Following his retirement from the Pan American Union, September 1, Mr. John Barrett announced the early organization of a popular and unofficial league of American countries and peoples. He outlined the plan as follows.

"Supported by the favorable attitude of a remarkable group of representative men in every country of North, Central and South America, I shall contribute my spare time during the next few months to forwarding a great civic international project which should appeal to general public interest. It involves the carrying to early completion of the organization already initiated by me, but here announced for the first time, of a great popular and practical league of American countries and peoples, which will probably be known as either the League of the Americas or the Pan American League. Its purpose will be to unite effectively for Pan American and Inter-American progress and peace that large and rapidly growing number of men and women in the Americas who realize the immense possibilities for the good of the Western Hemisphere which can result from their organized and coördinated economic, social, and intellectual coöperation, free from governmental, political, or official control. It will in no sense be a special agency of the United States for advantage over other American

countries or antagonistic to Europe or Asia, but a natural and logical coöperation of Western Hemisphere peoples, from Canada to Chile, for Western Hemisphere good. A new and important feature in Pan American undertakings will be the active participation of Canada and Canadians, who heretofore have been treated as outside the Pan American family. It will in no sense rival or clash with the work and prerogatives of the Pan American Union, which is strictly official and hence limited in its popular activities and influences. It will coöperate with and enlarge upon the work of the powerful Pan American Society of the United States, whose headquarters are in New York, and of which I had the honor to be the founder several years ago. The initial membership will be composed of men and women from the countries of North, Central and South America interested in practical Pan Americanism. In each country a national charter of uniform wording will be sought, making a federation both national and international in character, while coöperative in both spirit and fact."

The city of Winnipeg, in June, 1920, used proportional representation in the election of its ten representatives in the provincial assembly. This was the first instance of parliamentary elections under the Hare system in Canada. Furthermore, the number of votes cast—48,246—was by far the largest in any constituency in which the single transferable vote system has as yet been employed. The fact that there were forty-one candidates entailed a long series of operations before the count was completed. Only 819 invalid ballot-papers, or 1.7 per cent, were found. Local comment on the election indicates that the system worked very satisfactorily. An account of the election will be found in the August issue of *Representation*, the journal of the Proportional Representation Society of England.

BOOK REVIEWS

EDITED BY W. B. MUNRO
Harvard University

The Budget and Responsible Government. By FREDERICK A. CLEVELAND AND ARTHUR EUGENE BUCK. With an Introduction by William Howard Taft. (New York: The Macmillan Company. Pp. xxxiii, 406.)

Evolution of the Budget in Massachusetts, 1691–1919. By LUTHER H. GULICK. (New York: The Macmillan Company. Pp. xiv, 243.)

These two books are important contributions to the literature on the budget movement in the United States. *The Budget and Responsible Government* appears under the joint authorship of Dr. Frederick A. Cleveland and Arthur Eugene Buck, both of whom have at some time been identified with the New York Bureau of Municipal Research. Dr. Cleveland has written Parts I, IV and V which deal with the general relation between the budget and responsible government while Mr. Buck has contributed Parts II and III which indicate in a practical manner just how far the American states have actually proceeded in the direction of more responsible government through the centralization of administration and the adoption of budget systems.

Dr. Cleveland lays emphasis on the fact that popular control is the essence of democracy and that to make such control effective it is necessary to provide some mechanism by which the popular will can function. The principal parts of this mechanism, in the opinion of Dr. Cleveland, are to be found in administrative reorganization and a properly adjusted budget system through which responsibility can be located and enforced. After setting forth the essential features of popular control the author proceeds to discuss the way in which the budget system should be tied up with the movement for responsible government and executive leadership.

The constructive proposals suggested are practically the same as those set forth in the report of President Taft's commission on economy

and efficiency: First, that the executive should be responsible for the annual preparation of a financial and administrative program for carrying on the government. Secondly, that as an incident to such procedure there should be developed some means whereby the executive could personally present and defend his work-program before open sessions of the legislative body and before the whole country. Thirdly, that it is necessary to establish adequate control over the executive, both by the representative branch and by the electorate, through the development of a procedure of investigation, criticism and discussion in which each member should be called upon to vote for or against the financial program section by section and as a whole. Finally, in the case of a deadlock there should be an appeal to the electorate. As a part of these constructive suggestions Dr. Cleveland also points out that effective budget procedure is inextricably bound up with the movement for administrative centralization and that one cannot succeed without the other. Although he does not state so in definite terms it appears that Dr. Cleveland's plan would, in the last analysis, necessitate a parliamentary system of government.

Mr. Buck in Parts II and III of this book has given a very thorough and interesting account of the actual progress of the movement for administrative reform and of plans for centralizing executive responsibility in such states as Massachusetts, Illinois, Nebraska and Idaho, as well as an outline of the essential features and practical workings of typical budget systems in certain commonwealths. Mr. Buck's practical and critical comments on the budget movement and what it has actually accomplished balance very nicely the more or less philosophical discussion of the first part of the book.

Dr. Gulick in writing of the *Evolution of the Budget in Massachusetts* is on familiar ground, because of his experience as secretary of the joint special committee on finance and budget procedure of the Massachusetts legislature. His researches show that although the budget system was not the conscious aim of reformers until the last decade, the present procedure is really the outcome of a gradual evolution which began as early as 1691, culminating finally in the budget amendment of 1918 which imposes upon the governor the duty of preparing each year a complete financial program for presentation to the legislature. This amendment, as well as earlier attempts to improve financial procedure in the commonwealth, was the result of an effort to "control the tremendous increase in governmental expenditures" and to keep direct taxes down.

Commenting on the practical workings and results of the Massachusetts budget system the author states that three years operation is too brief to establish any definite conclusions but that several facts stand out clearly in recent experience as follows: (1) There is no great popular enthusiasm in budget reform, and public interest in the matter is limited to the more progressive public servants and to business men in the larger cities. (2) A permanent budget staff is necessary for the routine work of gathering and sifting estimates. (3) The success of a budget system depends upon its environment. In 1910, for example, the initial effort to establish an executive budget failed because of friction and political differences between the executive and legislative branches; while in 1920, at a time when there was a conspicuous degree of harmony in budget matters, the governor assumed responsibility for a complete budget with marked success. That the environment in Massachusetts is not wholly conducive to executive responsibility is shown by the fact that the governor is not given all the power essential to effective leadership. He is not required to present his budget in person and "thus to make his responsibility dramatic and personal," and the only budget that is publicly advocated before the legislature under the present procedure is the revised plan of the house committee on ways and means, the explanation and defense of which are in the hands of a member of the legislature. In fact the leadership in fiscal affairs is largely in the hands of the legislature which may account for the success of the system in Massachusetts. (4) Finally the budget system of Massachusetts, in spite of certain defects and weaknesses, "has come to stay" and its establishment is a step that will not be retraced. In Dr. Gulick's opinion; "It has resulted in a more systematic and sounder financial policy, and is to be credited with having prevented an unnecessarily large increase of state expenditures during the unsettled war years." The book is one which should appeal to the practical administrator as well as to the student of political science.

A. C. HANFORD.

Harvard University.

My Quarter Century of American Politics. By CHAMP CLARK. (New York: Harper and Brothers. Two volumes. Pp. 495; 472.)

In these volumes ex-Speaker Clark gives a brief account of his early life in Kentucky and Missouri and a full account of his experiences in

politics, of his observations on men and events that have come within his view during the quarter of a century of his public life.

Clark was first elected to Congress in 1892, was defeated in 1894, reëlected in 1896 and since then he has been continuously in Congress, being Speaker of four successive congresses (1911–19) and leader of the Democratic opposition for the greater part of the time when his party was in the minority. He imbibed an early interest in politics from his Kentucky folks. He deals not only with what he knows but with men and events that were on the stage before he was born. It happened that he was born on the very day that Webster made his Seventh of March speech in 1850. Clark makes use of this coincidence to indulge in a piece of unhistorical extravagance to the effect that this speech "ended Webster's political career," "made his name anathema," and "caused his picture to be turned to the wall in hundreds of thousands of homes." He then quotes in full Whittier's famous "Ichabod," in which Webster was pilloried by the anti-slavery poet.

Throughout his volumes Mr. Clark digresses to make historical comments which are not altogether reliable. His volumes contain a great deal of racy gossip and cloak room stories and character sketches. He tells stories and speaks rather fulsomely of the prominent men he has known—Speakers Henderson, Reed, Crisp, and Cannon; Presidents Cleveland, McKinley, Roosevelt, and Taft; Senators Vest, Gorman, Hill, Harris, Jones and others; Cabinet members Carlisle, Gresham, Hay, Olney, Lamont, Alger and Sherman; of Dingley, Payne, Tom Johnson, Hepburn, Galusha A. Grow and many other house members.

He gives two chapters to the institutions of Congress and the speakership; he considers the greatness and merits of early speakers; he discusses at length notable political and party struggles—the struggle over the house rules, many tariff struggles, the silver agitation, Speaker Reed's ruling on the quorum (1890), Cleveland's special session called for the repeal of the silver purchase act (1893), which, he says, "split the Democratic party wide open and was the cause of all our woe." He discusses the Sickles trial of long ago, approving Sickles' murder of Philip Barton Key and applauding his "righteous acquittal." He talks of congressional funerals, "lame ducks," wit and humor in Congress, heredity and physique in politics, congressional duels and personal encounters in senate and house, of orators and stump speakers from Demosthenes and Cicero to our own day, concluding that "the best rule for speech-making ever made in all the world" is the five-minute rule of the house.

The good-natured Speaker, commenting upon congressmen and senators from Matthew Lyons to his own day, is almost uniformly favorable, not to say eulogistic. His complaisance leads him to treat party friends and party foes without discrimination in his compliments. There is one notable exception when he comes to deal with the "vile and malicious slanders" of one Colonel William Jennings Bryan, of Nebraska. To this subject the Speaker devotes a chapter entitled "Baltimore," in which he recounts his early friendly offices toward Bryan and the latter's "outrageous conduct" at and immediately preceding the Democratic convention in which, through Bryan's intrigue and the operation of the two-thirds rule, Clark was "gouged out" of the presidential nomination of his party. Clark attributes Bryan's hostility to two facts—first, Clark's refusal to let Bryan "pull me around by the nose" and, second, to Bryan's renewed ambition for the presidential nomination. Clark's account of the original and early use of the two-thirds rule is not quite in harmony with the historical facts in the case, but what nettled him most was that, while he led all candidates on thirty ballots and had a clear majority on eight, William J. Bryan violating "his instructions and by base and false insinuations—to use no uglier word—robbed me of the nomination to which I was entitled by all the rules of decency, justice, honesty, common sense, and fair dealing."

Throughout these gossipy and voluble pages, we find much of repetition and more of exaggeration. Three times he tells that Speaker Henderson's leg was taken off piecemeal, which leads one to suspect that Speaker Clark's book came into being by a piecemeal, Chautauqua-lecture process. The language of superlative and extravagance is found in every chapter, if not on every page, and on every conceivable subject. A few illustrations may be cited from many:

The Presidency is "the most powerful office ever devised by the wit of man."

"Washington is the finest capital in the world."

"Congress is the greatest legislative power in all history."

To say that many senators and representatives are financially dishonest "is as big a lie as has been told on earth since Ananias and Sapphira had that ill-starred land transaction."

"Pike County, Missouri, is one of the largest, richest, and most beautiful counties in the world."

"John Morgan's raid was the greatest ride ever taken since horses were first broken to bit and rein."

"George D. Prentice was one of the greatest masters of English prose that this country has ever known."

"John C. Breckinridge was the handsomest man that ever straddled a horse, the most majestic human being I ever clapped eyes on."

Bryan's cross-of-gold speech was "one of the most opportune since the confusion of tongues on the plain of Shinar at the foot of the unfinished Tower of Babel."

The Constitutional Convention (1787) "was composed of the wisest men that ever met under one roof; the most sensible thing they devised was the separation of the powers—legislative, executive, judicial—the next wisest was to divide Congress into two houses"—an indication of the author's archaic view of the Constitution which in one of its parts, as he contends—that guaranteeing to the states equal representation in the senate—is unalterable for all time and is not subject to amendment.

In spite of its faults, which are easily forgiven to the genial author, the work is one of some value to our political literature. It is decidedly interesting and engaging reading. The lay reader may learn something from its pages though it may give him an undue perspective and emphasis in its attempts at history. But every such work by a politician of long public service adds to the sum total of our knowledge of past politics. While a great part of what Speaker Clark tells is not of much importance, much of it illustrates by anecdote and personal touch the characters and services of important public men in a notable era in American history.

JAMES A. WOODBURN.

University of Indiana.

Marse Henry. Recollections of Men, Women and Events During Eight Decades of American History. By HENRY WATTERSON. (New York: George H. Doran Company. Two volumes.)

It is somewhat unusual for a review to be personal, but perhaps an unusual book may justify it. At twelve years of age—in the memorable campaign of 1884—I began to read the editorials of Mr. Henry Watterson in the Louisville *Courier-Journal*, and learned to fix my eyes on the "Star-eyed Goddess of Reform" and to hate the "Robber Barons." I followed the lead of the editor through the campaign of 1896, by which time I had finished college and was beginning to do a little thinking on my own account; but it was the editorials in the

Courier-Journal that helped me breast the tide of free silver in a community where few stood for the gold standard. Such must be the story of a good many voters of today.

Marse Henry is the life story, somewhat scrappy in form but highly interesting, of the last of a list of illustrious editors. They lived in the days of personal journalism and their editorials counted. As a Washington correspondent, the son of a member of Congress, Mr. Watterson found easy access to the great, the near great, and the commonplace. Indeed, he seems to have been acquainted with most of the worth while statesmen, from Pierce, Cass, Douglas and Lincoln to Cleveland, Roosevelt and Wilson. He sat on the platform when Lincoln was inaugurated, but later joined the Confederacy against his better judgment. From 1872 to 1896 he took a leading and sometimes determining part in the councils of the Democratic party, one time shaping the platform for tariff reform somewhat against the wishes of the candidate, Mr. Cleveland. Nor were his familiars confined to statesmen, for he was equally at home among actors and musicians, and had a bowing acquaintance with authors, scientists—and gamblers, including the sovereign of Monte Carlo. Few men now living can say that they sat down to dine with Huxley, Spencer, Hill and Tyndall when they were practically unknown.

This is a book to be enjoyed, not criticized, but the serious historian will find in it some things of use in making up his ponderous tomes. It throws an interesting light on the Liberal Republican Convention of 1872. The election of 1876 has been pretty thoroughly worked, but Mr. Watterson's account of the happenings of that year, *quorum magna pars fuit*, is worthy of notice. Some may still differ with his estimate of Cleveland, but it cannot be ignored. As the champion of the Democratic party when that party stood for large "personal liberty," no sumptuary legislation, it is not surprising that he is now somewhat disgusted with the country for having gone dry and feminine. But one of the most surprising things to those uninitiated in the ways of politics will be to learn of the author's intimate friendship with so many prominent Republicans, including Blaine and Butler, when so much of his life was spent in unsparing denunciation of the Republican party and its leaders.

Mr. Watterson has caused the past sixty years to live again. He was chiefly interested in life as it centered about Washington, but his view extended from Louisville to the Riviera, and not the least interesting of the chapters are those dealing with his sojourns in Paris.

DAVID Y. THOMAS.

University of Arkansas.

Alexander Hamilton. By HENRY JONES FORD. (New York: Charles Scribner's Sons. Pp. x, 381.)

It is difficult to imagine a better brief life of Alexander Hamilton, the statesman. Not being in the Boswellian manner, this is not so good a picture of Hamilton the man. But neither space nor, apparently, the plan of the work, permitted much anecdote, description or discussion of personality. Nevertheless, where occasion offers, there are incisive, fair-minded and luminous analyses of character. One lays down the book with a clear grasp of Hamilton's important contributions to American nationality, and a fair idea of the manner of man he was.

After two brief but adequate chapters on Hamilton's antecedents and youth, seven chapters are devoted to the Revolutionary period, with Hamilton's military and political activities, and his marriage to Elizabeth Schuyler. A clear and masterly discussion of Hamilton's part in the making of the Constitution occupies four chapters, in the midst of which is inserted one on his law practice. Hamilton's services in the cabinet and his subsequent political activities occupy three more, while the two concluding chapters discuss his apparent achievements and his real accomplishments.

Uniform fairness, fascinating style and illumination of American political history are the outstanding characteristics of the book. The last trait was to be expected from an author of Mr. Ford's thorough scholarship in this field. As to fairness, not only is Mr. Ford just to Hamilton's opponents—even Burr—but he has succeeded in avoiding that common pitfall of biographers—hero-worship of his subject.

Two quotations exemplify the style and the author's remarkable comprehension of Hamilton's personality and services. "The peculiar heroism of his statesmanship is his utter fearlessness of unpopularity." (p. 168). "Hamilton is an Alan Breck with a genius for statesmanship." (p. 370). These two theses—epitomizing the phases of the subject—are developed most satisfactorily. The present writer has seen no other work on Alexander Hamilton so illuminating. If the rest of the series ("Figures from American History") measures up to the initial volume, the publishers will merit the gratitude of the reading public.

The presswork is excellent, including the proofreading. The book has a fair index and the penultimate chapter contains a discussion of the source and secondary materials pertaining to Hamilton.

MILLEDGE L. BONHAM, JR.

Hamilton College.

Leonard Wood—Administrator, Soldier and Citizen. By WILLIAM HERBERT HOBBS. With an Introduction by Henry A. Wise Wood. (New York: G. P. Putnam's Sons. Pp. 272.)

This book is not a formal biography. In its nine chapters there is a discursive treatment of the chief phases of General Wood's career, mingled with much adverse criticism of the present administration's attitude toward the war both before and after America's entrance into it. The author's point of view as to national policy may be gathered from the following statement on pages 40 and 41:

"If time can be found for full deliberation upon the Utopian proposals of the pacifist set forth with so much noisy propaganda, the sound sense of the nation may be relied upon to assert itself in their repudiation; for Americanism has from the beginning of our history been a dominant national trait, and throughout history nationalism has always been immensely stimulated by triumphs in foreign wars."

The book is obviously a campaign document and not a very good one. It is so fulsome in its eulogy of its hero and so bitter in its denunciation of all who disagree with him, but above all of President Wilson, that it overshoots its mark in both directions. Even a campaign document should present some appearance of judicial balance and desire to set forth the truth. If it were not for the descriptive words on the title page, more than half of this book would convey the impression that President Wilson is its hero in the sense in which Satan is the hero of *Paradise Lost.* The carelessness with which the book is prepared appears from the statement (p. 36) that after attending the German army manoeuvres in 1902, General Wood returned to warn his government of impending danger, but "the warning was unheeded and bitterly resented by the pacifist Government in power." The pacifist head of the American government in 1902 and for six years thereafter was Theodore Roosevelt.

LAWRENCE B. EVANS.

Washington, D. C.

The Obligation of Contracts Clause of the United States Constitution. By WARREN B. HUNTING, Ph.D. (Johns Hopkins Univ. Studies in Historical and Political Science, Series xxxvii, No. 4. Baltimore: The Johns Hopkins Press. 1919. Pp. x, 120.)

The author of this monograph was killed on July 15, 1918, while in service in France, with the result that the title under which it is pub-

lished indicates the scope of its original design rather than its actual performance. The subject to which it is essentially devoted is the historical and legal basis of the Dartmouth College decision.

By section 10, lrticle 1 of the Constitution, the states are forbidden to pass laws "impairing the obligation of contracts." In his concluding paragraph, Dr. Hunting writes of this provision: "It is very plain that the Convention had in mind only retrospective laws as impairing the obligation of contracts, and it is almost equally plain that they had in mind only contracts of private individuals." In the face of this fact he advances the thesis that the extension to public grants which the clause just quoted received in the decisions in Fletcher v. Peck, and Dartmouth College v. Woodward had a good deal of basis in accepted legal and political theories of the time, and in the common law as well.

His argument may be summarized as follows: At the common law a franchise was property. The grant of a franchise, like that involved in Dartmouth College v. Woodward, stood therefore on the same legal footing with a grant of land, such as was involved in Fletcher v. Peck. A grant, however, is but a conveyance, and a conveyance is characterized by writers on *Naturrecht*, as well as by writers on the civil law, as "a contract." Indeed, Blackstone himself was quoted by Marshall in Fletcher v. Peck as classifying all contracts as executory and executed, and as declaring that a "contract executed differs in nothing from a grant." But, Dr. Hunting continues (p. 34), "call a conveyance a contract and you raise the suggestion that there must be an obligation; you emphasize the fact that the grantee has his rights merely by the consent of the grantor; you obscure the part which the state takes in the matter; you suggest the idea that if one man obtains his right solely from another, he necessarily holds it subject to the will of the latter, who can go no farther than to bind himself never to exercise the power of revocation." Marshall's assertion, therefore, in Fletcher v. Peck, that a grant, though of itself an executed contract, implies an executory contract on the part of the grantor not to reassert his right over the thing granted, was not extravagance, albeit the rule of estoppel with which he sought to support it had no application to the case.

This argument breaks down at an essential point. None of Dr. Hunting's citations (pp. 19–36) go to prove more than the obvious fact that a conveyance must be preceded by a contract—the fulfillment of which is compellable at English law by an action for specific per-

formance—not that a conveyance is followed by an obligation *in personam* against the grantor. The test of the validity of Marshall's doctrine that an implied contract supplements a grant is quite simple. It consists in the question whether an action for breach of contract would lie against a grantor who attempted to disturb the grantee in the use of the thing granted; whether, in fact, a grantor would find himself in a different situation from that of anybody else attempting the same thing. The answer being no, it follows that Marshall's implied contract theory was pure moonshine.

The fact is that Dr. Hunting demands too specific a provenance for the doctrine of Fletcher v. Peck and Dartmouth College v. Woodward. The basis of that doctrine was not legal or even theoretical in a narrow sense; rather it was ethical and it is shown to be so in Marshall's own words in both cases, as well as in the later case of Ogden v. Saunders. In this connection Dr. Hunting seems to have overlooked the significance of Marshall's admission in the Dartmouth College case that Parliament would have had the power to revoke the charter the moment it was granted, though all would have recognized "the perfidy" of the act, and that New Hampshire could have done the same thing at any time *till* the adoption of the Constitution. This admission seems to infer that Marshall was well aware of the distinction which the notion of parliamentary sovereignty had established between *moral* and *legal* obligation. Indeed, Dr. Hunting himself speaks at one point (p. 75) of "a state whose legislature is legally omnipotent" though in other passages (e.g., pp. 71 and 94) he seems to regard Parliament's omnipotence as either a crude fact which had not at this date been assimilated to the law, or as something illegal. I must add my conviction that Dr. Hunting has exaggerated the closeness of connection in Marshall's mind between Fletcher v. Peck and Dartmouth College v. Woodward. It is true that Story and Washington both build directly upon Fletcher v. Peck in their concurring opinions in the latter case; but Marshall does something quite different. This, however, is a matter on which there is no space to enter upon here.

Dr. Hunting's criticisms of Shirley (pp. 60 ff. and 94 ff.) are more convincing than his animadversions upon Bartlett's argument (pp. 76–82). His showing (pp. 72–75) that the distinction between public and private corporations was not clearly established at the time of the Dartmouth College decision is important. His suggestion in a footnote (p. 88) that "a legislative act repealing misused or non-used

franchises should [not] be denied effect by the courts, if the fact of misuser or nonuser be shown," while it overlooks Marshall's invocation of the principle of the separation of powers in an analogous matter, is also important; and the same must be said of his remarks on the subject of "consideration" (pp. 106–107), a topic to which he had designed to devote an entire chapter. The examination of the views of James Wilson, the reputed framer of the obligation of contracts clause (pp. 115–116), would have been strengthened by recourse to his opinion in Chisholm v. Georgia.

Dr. Hunting has left us a study demanding the serious attention of students of American constitutional law. Many of the questions which it raises probe very deep. The answers which it returns to these questions, if open to challenge, are for that very reason provocative of thought. Both questions and answers reveal a mind of unusual penetration and independence, the loss of which to the profession must be cause for deep regret. This volume is worthy of its place in the distinguished series in which it appears.

EDWARD S. CORWIN.

Princeton University.

The National Government of the United States. By EVERETT KIMBALL, Ph.D. (Boston: Ginn and Company. Pp. v, 629. Appendix.)

Because it is the newest book upon the subject as well as the only first-rate college text of recent date dealing exclusively with the national government, Professor Kimball's work has been received with more than usual interest by those engaged in the study and the teaching of American government. The expectations to which its announcement gave rise have been fully realized, and its quality and character undoubtedly will gain for it not only a wide use in the class room, but also a permanent place as one of the standard works of reference upon the subject. It is peculiarly well adapted for both purposes, and perhaps its distinguishing characteristic is that it combines successfully the qualities of a workable textbook with those of a treatise.

Professor Kimball frankly describes the government from the constitutional viewpoint. "I have endeavored to show the historical origins and the development of our national political institutions and to present an adequate picture of the actual workings of the government," he writes. "But I also have attempted never to lose sight of the

fact that the Constitution is the supreme law of the land, and its interpretation by the Supreme Court is, until altered, authoritative. The important fact is emphasized that in all phases of our national life the government is a government of law." The frequent and at times extended quotation from the opinions of the Supreme Court is declared to give the book "a two-fold character, that of a textbook in which institutions are described and analyzed, and that of a source book in which appear the actual words used by the court in expounding or limiting the powers of the government."

In the author's hands this method has produced a book which has not been surpassed in the presentation of the fundamental facts concerning the government of the United States. The student who masters its contents will have acquired a grip upon the essential principles of our national political system which will give him a firm foundation for subsequent political thought and action. He also will have gained a practical understanding of the actual processes of the government and the politics of the nation; for Professor Kimball has turned to the Supreme Court to find out what the government actually is rather than for an exposition of what it ought to be, and in addition he has presented an adequate description of the political as contrasted with the purely legal aspects of our institutions. There are no better chapters in the book than the two entitled "Congress at Work," and none better anywhere upon this subject.

The book is arranged along conventional lines. The first four chapters give the constitutional background, one, two and three being historical and four expounding fundamental constitutional principles. Political issues and parties are described and discussed in the two following chapters, after which ten chapters are devoted to an account of the organization and functions of the three great departments. This part of the book is about equal in volume to the entire space devoted to the national government in most of the other standard texts (Kimball pp. 423, Bryce 410, Beard 437, Munro 387). The remaining six chapters treat of the war powers of Congress, finance, the regulation of commerce, the federal police power, foreign affairs, and the government of territories. The Constitution is printed as an appendix and there is an excellent index.

From the standpoint of thoroughness and completeness Professor Kimball has left little to be desired. Few questions connected with the national government have escaped consideration. Occasionally one would wish for fuller discussion, as in the case of citizenship or of

presidential primaries. In general, too, it may be said that more attention has been paid to the organization and powers than to the actual operation of the various parts of the government, although it is not intended to imply that the latter phase of the work is inadequate. The chapters on the war powers, the regulation of commerce, the national police power, and, in lesser degree, that on finance, would not be out of place in a treatise on the constitutional law of these vital subjects.

This book is singularly free from the minor errors which sometimes mar an otherwise excellent work. The quotation, "take care that the laws be faithfully enforced," (p. 59) is the sort of a slip that is particularly hard to detect once it has crept into a manuscript. The number of Republican votes required to entitle a congressional district to its second delegate in the Republican national convention (p. 158) is 7,500, instead of 7,000. There are those who would question the "absolute accuracy" of referring to "a citizen of the United States and the resident of a state" (p. 76). But there are few instances in which those who use this text will have to correct it. Clarity rather than brilliancy marks Professor Kimball's style, and on the whole the book and the several chapters possess unity in satisfactory degree. An exception, perhaps, is the treatment of the election of the President, particularly in connection with the composition of the national conventions (pp. 152, 156, 158). The nature of these criticisms, however, simply emphasizes the excellence of the production. As a text and as a treatise this book is assured of a permanent place in the literature of American government.

RALSTON HAYDEN.

University of Michigan.

The Foreign Service: Report on. By the Committee on Foreign Service of the National Civil Service Reform League. (New York: 8 West 40th Street. 1919. Pp. 322.)

This report is the result of a most searching investigation both abroad and in this country concerning the foreign service of the United States. Senators, congressmen, officials of the departments of state and of commerce, members of the diplomatic and consular branches of the service, and others were called on for information and suggestions. The committee engaged in this survey was composed of Ellery C. Stowell, Chairman, Richard H. Dana, George T. Keyes, Ogden H. Hammond, Ansley Wilcox, and H. W. Marsh, secretary.

The data presented in this report includes most valuable information concerning the organization of the department of state and of the whole foreign service, the functions of all officials, rules and regulations on the whole subject, legislation by Congress and interesting facts regarding the foreign service of certain other countries, such as England, Germany and Japan. Extracts from hearings before congressional committees are also included.

This array of information is of the utmost value to students of politics as well as to all American citizens interested in the efficiency of our foreign service. There is a wealth of material in this compact volume which might be utilized to advantage by journalists and others who have occasion to write on subjects affecting our foreign relations. For example, the testimony of former members of the diplomatic and consular services, as well as the mass of statistical data is often most suggestive and full of interest.

The committee has not only gathered its facts with great thoroughness; it has intelligently studied these facts, and reached definite conclusions of practical importance. Its recommendations are summarized as follows:

"1. That the entrance examinations to the foreign service be improved and placed more strictly on a merit basis. . . . .

"2. That there be an adequate increase of salaries in the foreign service. . . . . .

"3. That embassies, legations, and consulates be purchased in the principal cities. . . . .

"4. That the rule, known as the state quota, according to which appointments in the foreign service are distributed among the states in proportion to the number of inhabitants, be abolished. . . . .

"5. That political considerations be entirely eliminated and that the merit principle be applied to appointments and promotions in the foreign service. . . . . .

"6. That the President and other appointing officers be urged to select the representatives of international conferences more largely from the foreign service and from the experts in the employ of the government. . . . . .

"7. That the Americanization of the consular service be completed by the appointment of salaried vice-consuls, after examination, to act in the place of foreigners now serving etc., ...

"8. That the foreign service be reclassified. . . . . .

"9. That the Department of State publish a Foreign Service Annual.

"10. That the organization and personnel of the state department be perfected and more adequate compensation provided. . . . .

"11. That the relations between the various departments, boards, and commissions concerned in the supervision of control of our foreign affairs be carefully defined. . . . .

"12. That Congress be urged to enact a law to cover the above recommendations in so far as possible, and that the President be urged to issue executive orders to supplement and complete such legislation."

The fifth recommendation to the effect that the merit principle be applied to appointments and promotions in the foreign service is of particular interest. This suggestion originated with Congressman Rogers of Massachusetts, whose labors in behalf of the foreign service deserve highest praise. It reads: "That the President be urged to fill the post of minister by the promotion of capable officers in the foreign service and that when a vacancy occurs the secretary of state be required to submit to the President for his consideration the names of secretaries and consuls who merit promotion." In limiting this requirement to ministers and exempting ambassadors, the committee has prudently compromised by recognizing the exigencies of the situation which at times demand that the President should be free to select the most representative Americans for such important posts as London, Paris, and elsewhere.

In its treatment of the question of the place of the "spoils system" in appointments, the committee is guilty of a *non sequitur* in its argument when it says: "The necessary support for measures of recognized value can at times be secured only at the price of political barter and humiliating compromises. If the President were protected against these blackmailers and against this political pressure, needed measures of legislation could be secured more easily on their merits, or if not, the President and party leaders would be forced to maintain a campaign of education to bring the legislators in line and force them to enact the meritorious legislation." To protect the President by weakening his power of appointment seems a rather curious suggestion.

There may be reasonable doubt whether the time has yet come when the President should be restricted in his appointments of ministers to those already in the service, but the proposal that before making an appointment he should be required to consider the names of secretaries and consuls deserving promotion through merit is entirely reasonable and felicitous in character. It would constitute a salutory check on the tendency of Presidents to reward "deserving" partisans, and at

the same time would encourage those in the service to seek preferment through merit.

There is much in this admirable report inviting praise and comment, but the space allotted this review does not permit. By way of summary, the report aims first, to furnish accurate information as to what has already been accomplished to render the foreign service more efficient; secondly, to present the actual state of affairs; and thirdly, to present criticisms and suggestions tending to insure the improvement of the service along sensible, practical lines. It should be read with great care by all Americans who desire to see the nation most efficiently represented abroad at a time when international affairs have become of such vital significance to the United States.

PHILIP MARSHALL BROWN.

Princeton University.

Foreign Rights and Interests in China. By WESTEL W. WILLOUGHBY. (Baltimore: Johns Hopkins Press. Pp. xx, 594.)

As the basis of his work Professor Willoughby makes use of the half dozen most complete collections of China's foreign treaties, conventions, loan contracts, railway agreements and the like, chiefly MacMurray's, which is the latest and seems to include every obtainable document down to last year. He next determines the essential chapter subjects for his book; and here, we conceive, he has lost sight of no topic upon which light is likely to be sought, whether by specialist or by general reader. Among these topics are extra-territoriality, foreign commerce and the rights of foreign merchants, concessions and settlements, leased areas, the open door, Japan's political ambitions in and towards China, opium, China's foreign debts, railway loans, and foreign control. Each of these themes—and others no less essential are necessarily omitted—has been developed from the appropriate treaty clauses or other formal stipulations. His explanations and comments are thorough-going and illuminating. They are never wearisome, as legal discussions sometimes are; and they are not infrequently reinforced by appropriate passages from Morse, Bronson Rea, Overlach or Hornbeck, or from Chinese writers such as Mr. Tyau and Mr. Koo, and by extracts from the speeches, or despatches or statements of the negotiators and government officials concerned.

From this book as from no other single source, so far as we know, can the financier estimate approximately China's income and her

present loan entanglements; the consular officers can here unravel the perplexities of foreign "settlements," "concessions," courts and jurisdictions; the missionary can discover just what are his treaty rights of travel, residence, and land tenure in the interior of the country; and the merchant can learn his due relations while in China (whether as buyer, seller, importer, duty-payer or steamer-owner), to other merchants around him and to the officials, Chinese and foreign, with whom he must deal. The diplomatist, the publicist, the student of international law, and equally the general reader cannot fail to recognize a large debt due to Professor Willoughby for this clarifying "handbook," as he too modestly describes his valuable and entertaining volume. In its 600 pages we found not one dull paragraph.

Nearly one quarter of the volume is devoted necessarily to China's complicated relations with Japan, territorial, railway, military, and financial, *i.e.*, loans in infinite variety. The Twenty-one Demands, the Shantung aggressions, the Manchurian encroachments, the secret covenants secretly arrived at, the riot of unsanctioned and insidious loans are described in clear direct narration. Article, clause, date, given without sensational comment, compose a cumulative indictment of Japan's unscrupulous methods and relentless aims. Strange it is that beside China's several oppressors in the past none has equalled the present day Japan, her own pupil in culture, her nearest neighbor, her almost kin in race, her natural ally in policy. But Japan recks not; she confidently continues to sow the wind; and the whirlwind at reaping time is not unlikely to involve us all! It is for the coming consortium, of which agency Professor Willoughby briefly speaks, backed by Britain and America, to forestall if not too late the threatened catastrophe.

It is to be hoped that Professor Willoughby may be able at an early day to prepare the other volume, of which intimation is given in his preface, dealing with the policies of the treaty powers in the past, from the ethical and practical point of view. Especially valuable would be his contemplated discussion of Japan's relations to China and kindred questions.

E. B. DREW.

Cambridge, Mass.

The New Germany. By GEORGE YOUNG. (London: Constable and Company Ltd. Pp. 325.)

Die Verfassung des Deutschen Reiches von 11 August, 1919. By DR. F. GIESE. (Berlin: Carl Heymanns Verlag. Pp. 456.)

Die Verfassung der Republik Deutschösterreich. By DR. ADOLF MERKL. (Vienna and Leipzig: Franz Deuticke. 1919. Pp. 184.)

Material for the systematic and critical examination of the new republican constitutions of central Europe is becoming available; and the three volumes here noted furnish important information about the new governments in Germany and German Austria.

Mr. Young's book is a journalistic account of the revolution and reconstruction in Germany up to the end of 1919. It includes chapters on the revolution, council government, the Treaty of Versailles, and the new constitution, with a translation of the latter document. It gives a record of events, based largely on personal observation, and written with a facile pen; but makes no attempt at a comprehensive analysis either of the revolutionary movement or of the new governmental system. The reaction of the different German parties toward the Peace Treaty are presented with a tone of sympathy, which reflects the opinion of those English liberals who consider the treaty both unjust and unsound. The new constitution is described as a very considerable advance in democratic development from the old régime, but as a compromise in comparison with the more radical views which were dominant in the early days of the revolution.

Dr. Giese, professor of public law at the University of Frankfort, has prepared a detailed annotated edition of the new German constitution. An introduction of sixty pages, on the foundation of the new government, presents a legal analysis of the steps in the transition from the former empire to the republic, and describes the stages in the process of preparing the new fundamental law. This is followed by the text of the constitution, with extensive notes and bibliographical references to each chapter and article. The volume is therefore a handbook of great value for the detailed analysis of the provisions of the new constitution, at the beginning of its operation.

Dr. Merkl, an official in the chancellery of German Austria, presents, in his monograph, a more systematic but less detailed analysis of the new republican government of that country. The first part deals with the general principles of the transition and the new system; while the

second deals more specifically with the different organs of government. A striking contrast with Germany is seen in the fact that in place of a single document, the sources of the new Austrian constitutional law (as of the former Austrian government) are to be found in a long series of measures. A list is given, with the titles of 31 statutes, 2 resolutions and one declaration, promulgated from October 30, 1918 to April 4, 1919. The most important are the provisional constitution of December 19, 1918, and two statutes of March 14, 1919.

It is of interest to note that both Dr. Giese and Dr. Merkl emphasize the doctrine of the complete legal discontinuity between the old and the new political systems. Attention may also be called to the declaration (in a statute of German Austria, March 12, 1919) that German Austria is a constituent part (*Bestandteil*) of the German *Reich*, in connection with the paragraph in the German constitution (article 61) providing for the representation of German Austria in the German Reichsrat, which the Peace Conference required to be canceled.

J. A. F.

France and Ourselves. Interpretative Studies: 1917–19. By HERBERT ADAMS GIBBONS. (New York: The Century Company. Pp. 286.)

For four years France bore the brunt of the German attack. During this time over a tenth of her soil, including some of her richest industrial provinces, were in German hands, the line of battle was never much over one hundred miles from her capital city, and twice was at its very gates. During these four years practically every able-bodied man between eighteen and fifty, except those imperatively required by necessary work at home, was in the army. All of France not occupied by the enemy was flooded with refugees from the invaded regions; the entire industrial life of the country was disorganized; nearly a million and a half of the men of the country were actually killed, and over half as many mutilated for life. There is scarcely a family in France which has not suffered not only heavy pecuniary loss, but bereavement of one or more of its members.

To all this must be added the terrific moral and mental strain through which France has passed. To the French a German conquest meant the end of all they held dear in their national life, and they realized to the full the enormous force of the German attack and the danger that

such a conquest might be its result. Three times, indeed, once in the first rush of 1914, once when the French offensive failed in the spring of 1917, and once again in the spring of 1918, it looked as though defeat were near, and until within a month of the armistice no one in France, except, perhaps, the small group of able and self-confident men who directed her armies, could do more than hope that the country would escape disaster.

This is a brief and inadequate statement of a few of the facts which Americans should bear in mind when they judge the temper and policy of France today. These facts and many more can be learned from reading Mr. Gibbons' book, and all the more vividly because the book is not a cold-blooded study made after the event, but a reprint of articles written at white heat during or immediately after the war while the agony of the struggle was in the writer's mind. Because written in this way, the book is full of a passionate eagerness for friendship and coöperation between France and America, which leads the author sometimes to statements, such as that on page 74, that "Deep down in the heart of every American is a passionate love of France," which it may be doubted if he would write today when many French and Americans are passing through the inevitable phase of reaction from the tremendous emotion which united the two countries during the war. Indeed, it may be doubted whether any but a small minority of any nation are ever inspired for long by a feeling which can fairly be described as "passionate love." We suggest for Mr. Gibbons' consideration when he is next moved to use such a phrase that he should read the conversation between Boswell and Doctor Johnson in which the great doctor said that public affairs vex no man, and that in spite of his strong feeling at the iniquities of the Whig opposition in the house of commons, he never slept an hour less nor ate an ounce less meat. So Mr. Gibbons' zeal leads him to slur over the fundamental differences between the Wilsonian policy of internationalism tinged by sentiment and the French realistic view of their relations with Germany. He is too anxious to see France and America working hand in hand to be willing to admit the difficulties that stand in the way so long as Mr. Wilson or those in sympathy with his policy remain at the head of affairs in the United States.

Much of the book must be classed less as history than as propaganda. though propaganda of a very high-minded type. In parts, too, as in the chapter dealing with the case against Cailiaux, which was written in November, 1919, some months, that is, before the case came on for

trial, the author's account would have to be supplemented by facts necessarily inaccessible to him at the time. But the inevitable shortcomings of the book add in another way to its value. It vibrates with the spirit of the war and with the generous enthusiasm that inspired those Americans to whom the true character of France had been revealed. Its statements of fact are based on personal experience and intelligent observation. Often, as in the chapter on the industrial effort of France during the war, they are extraordinarily lucid and impressive.

We can cordially recommend this book to everyone who wishes to gain a true view of France and of what should be our attitude toward her people.

ARTHUR D. HILL.

Boston, Mass.

The French Revolution: A Study in Democracy. By NESTA H. WEBSTER. (New York: E. P. Dutton and Company. Pp. 519.)

This is a curious book. The author's purpose is to sweep away the legends of history perpetuated by the Germanized genius of Carlyle and the older historians, and to write an entirely new and unbiased history of the French Revolution. She therefore returns to the sources (chiefly the royalist and anti-republican sources) which she has read widely and carefully. But she says virtually nothing of all the great reform legislation, the political parties, the agrarian changes, and the attempts to establish liberty and equality, which made the French Revolution an epoch in human history. Instead she gives a detailed and very readable account of six dramatic episodes which resulted in attacks on royal authority and property: the Siege of the Bastille, the March on Versailles, the Invasion of the Tuileries, the Siege of the Tuileries, the Massacres of September, and the Reign of Terror. The underlying causes of these attacks are to be found, she thinks, not in the uprising of a down-trodden people against oppression, but in four great intrigues: "(1) The intrigue of the Orléanists to change the dynasty of France; (2) the intrigue of the Subversives to destroy all religion and all government; (3) the intrigue of Prussia to break the Franco-Austrian alliance; and (4) the intrigue of the English revolutionaries to overthrow the governments both of France and of England" (p. 34).

It reads like an anti-bolshevist account of the Russian Revolution. This attempt to explain the whole revolution as a result of four gigantic intrigues is like reading the history of England in *Punch*, or that of Napoleon in Mr. Broadley's collection of caricatures. That there is a kernel of truth in each of these factors which fomented trouble and disorder in France, as there is at the bottom of every caricature, none will deny; but to magnify them a hundred-fold as the great cause of the Revolution is to caricature, not correct, history. Mrs. Webster's volume is exceedingly interesting; it may lead historians to pay more attention to these new factors which she emphasizes; in fact, in its selective use of abundant source material and its unsympathetic attitude toward "democracy" it is suggestive of Taine. And it likewise makes one think of what Aulard wrote of Taine's work: "*Il n'y a, dans ce roman philosophique, rien qui ressemble à de l'histoire.*"

SIDNEY B. FAY.

Smith College.

Lord Grey of the Reform Bill: Being the Life of Charles, Second Earl Grey. By GEORGE MACAULAY TREVELYAN. (New York: Longmans Green and Company. Pp. xiv, 413.)

A life of the second Earl Grey has long been needed to complete the series of memoirs, biographies and volumes of letters in which is to be found most of the political history of England since the accession of George I. Lord Grey already had a place on the library shelves through the publication of his correspondence with the Princess Lieven and with William IV. But until the appearance of the present volume there was no authentic life of this great statesman—no life prepared by an author who had access to his letters and papers. Almost every one of Grey's contemporaries among British statesmen has long had his place in political literature, and volumes on the men of later generations in imposing array have found their way into the libraries. But now that the life of Lord Grey has made its appearance it is clear that great advantages have accrued from the long delay.

Mr. George Macaulay Trevelyan is thoroughly familiar with the period in English history in which Grey was an important figure. He is a practised hand in the writing of biographies, having already written the lives of three of Grey's contemporaries—Macaulay, Charles James Fox and John Bright. With the lapse of time it has been possible for him to see in good perspective the years from 1786, when Grey entered

Parliament, to 1834, when he retired from public life, and while writing the book he had also the advantage of the parallel afforded by the recent war with the wars of the French Revolution. He saw the recrudescence of the passions of hatred and intolerance, with all their consequences in the loss of liberties and free speech. All these modern developments threw fresh light on the years of reaction from the last decade of the eighteenth century to the end of the third decade of the nineteenth. Moroever Mr. Trevelyan has been able to single out the great achievement of Lord Grey—the passing of the Reform Act of 1832—and to give this its due prominence, while indicating quite sufficiently the other aspects of his life, public and private. This selection has enabled him to condense the biography into one manageable volume, instead of extending it to three, like Morley's Gladstone or like the composite biography of Disraeli. In these days of many books this one feature of the life of Lord Grey is a cause for profound gratitude to the author.

Like his son-in-law, Lord Durham, Grey has suffered somewhat in popular estimation for lack of an adequate biography, and Mr. Trevelyan had to undertake something of a vindication, just as was done for Durham in Reid's life of the author of the report on Canada. Mr. Trevelyan shows clearly that it is to Lord Grey that the Reform Bill owed not only its passage—probably no other statesman could have won King William IV over to the plan of making peers sufficient to ensure its passage through the house of lords—but also its comprehensiveness, and the sweeping away, without compensation to the owners, of the rotten boroughs which had so long disgraced the English electoral system. It is a fascinating story, excellently told, and even the reader who knows little of English political history will find it interesting on account of the light and hope that it sheds on modern conditions.

A. G. PORRITT.

Hartford, Conn.

Some Problems of the Peace Conference. By CHARLES HOMER HASKINS AND ROBERT HOWARD LORD. (Cambridge: Harvard University Press. Pp. viii, 290.)

The purpose of these lectures was primarily to explain the more important territorial problems faced by the Peace Conference and to sketch the solutions adopted. The result, however, is of far greater

value than might be supposed from the title or the modest preface, and may be regarded, without question, as the most important work on the conference that has yet appeared. It should do much to counteract the overdrawn and splenetic sketches of Keynes, Dillon, or Creel, and one regrets that it could not have been read by the senators last fall. Only one of the chapters attempts a description of conferential methods. But the tone of the authors and their method of presentation is so strongly reminiscent of the conference and its atmosphere, that the book forms at once a picture and a justification. The force of the justification is enhanced because it is entirely unconscious, for the authors are scrupulously careful to present all arguments on both sides, in the consideration of each problem, and leave it to the reader to decide upon the merits of the solution. They speak, naturally, with authority, since they represented the United States on commissions which drafted some of the more important decisions of the conference, It will be a surprise and relief to many Americans to realize the judicial attitude taken by their delegates at Paris, as well as the wealth of their exact information.

Of the eight chapters the first four are by Mr. Haskins. The first sketches succintly and with dramatic vigor the European state of mind after the armistice; the immediate problems of reconstruction which must be settled in conjunction with the drafting of permanent peace, and the steps by which the treaty articles took form. The three that follow deal with Belgium and Denmark, Alsace-Lorraine, the Rhine and the Saar. The four last chapters, by Mr. Lord, take up Poland, Austria, Hungary and the Adriatic, and the Balkans. In each an historical setting to the territorial problem is first given, followed by a dicussion of the chief factors incidental to its settlement, the various solutions put forward, and the main lines of that ultimately adopted. The lay reader will be attracted by the clarity of presentation, while the serious student will find, closely compressed, information nowhere else collected in convenient form, voluminous bibliographical notes at the end of each chapter, illuminating maps, and a complete index.

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MINOR NOTICES

Among the various German memoirs relating to the war period Count Bernstorff's *My Three Years in America* (Scribner's, 428 pp.) will probably prove to be the most interesting so far as the student of American diplomacy is concerned. Throughout the book the author keeps to his text; his discussions are confined wholly to German-American relations and have nothing, except incidentally, to do with the diplomatic manoeuvers which went on among European countries during these three fateful years. The writer's main purpose seems to be twofold, namely, to prove that he did his best to prevent America being drawn into the war, and, second, to show that Germany's debacle came as the direct result of diplomatic blunders due to ineptitude in the Wilhelmstrasse. There are many curious statements in the book, some of which no sophisticated reader will believe without confirmation. For example, Count Bernstorff assures us that "Wilson had firmly made up his mind, in case Mr. Hughes was elected, to appoint him secretary of state immediately, and, after Hughes had informed himself on the political position in this office, to hand over the presidency and himself retire." It is rather surprising, if this be true, that the German ambassador should have been the only one taken into the President's confidence. At any rate students of political science will find many things in this volume to provoke dissent, and some also that will meet with hearty concurrence. Among the latter is Count Bernstorff's soliloquy that if America had entered the war two years earlier it would have been a shorter war and a better one for all concerned.

An imposing volume from the Carnegie Endowment for International Peace is *A Monograph on Plebiscites* (1088 pp.), by Sarah Wambaugh. The greater part of this is a collection of official documents; but these are prefixed by a historical study of the theory and practice of plebiscites, from the French Revolution to 1914. This study is both interesting and timely, in view of the plebiscites provided for in the Treaty of Versailles. It would be more useful if printed in a smaller volume, detached from the extensive collection of documents.

A timely monograph entitled *The Senate and Treaties, 1789–1817*, by Professor Ralston Hayden of the University of Michigan has been published by The Macmillan Company in the University of Michigan

Publications (264 pp.). The volume contains a detailed study of the treaty-making powers of the United States senate during the formative era. Professor Hayden points out and proves conclusively that the procedure of the senate in dealing with treaties and its relations with the executive in the performance of their joint functions are today "very much as they were a century ago, although quite different from what they were expected to be in 1789." A long and altogether admirable chapter dealing with Jay's treaty brings out many interesting points concerning the senate's power to amend a treaty and the question whether a treaty, if amended, must be resubmitted. The study is based on source materials and is well written.

The University of Chicago Press has issued *An Introduction to the Peace Treaties* by Professor Arthur Pearson Scott (292 pp.) This volume does not purport to be an "inside history" of what went on at the Peace Conference. It is simply an outline of the provisions of the Versailles Treaty and of the minor settlements with a useful commentary on the various clauses, all conveniently arranged for study or reference. The book is in all respects what its title implies. It offers the reader sufficient data upon which to form his own opinions but does not burden the text with those details which are immaterial to the general problem. The author's comments are discriminating, unbiassed, and always helpful.

Messrs. E. P. Dutton & Co. have brought out a second edition of J. Ellis Barker's *Economic Statesmanship* (624 pp.) When this book was first published in the autumn of 1918 the negotiations at Spa and Versailles were still in the future. The new edition accordingly includes about two hundred additional pages dealing with problems and movements which have come to the front during the last two years. About half the new material relates to the economic position and future of Russia and Japan.

The story of the unseating of the Socialist assemblymen by the New York legislature at its last session is fully narrated in Louis Waldman's *Albany: The Crisis in Government*, published by Messrs. Boni & Liveright (233 pp.) The author explains that he has given enough of both sides of the controversy to enable his readers to form adequate judgments of their own, but there is no pretence at any concealment of his personal sympathies. Quotations from the official records are freely used and make up a goodly portion of the volume.

The Arthur H. Clark Company of Cleveland has recently compiled and published *The United States: A Catalogue of Books relating to the History of its Various States, Counties and Cities.* (321 pp.) This is said to be the most extensive catalogue of its sort ever issued and it is particularly valuable for its listing of municipal histories.

Messrs. E. P. Dutton & Co. have issued a *Political Summary of the United States, 1789–1920,* compiled by Ernest Fletcher Clymer. Although the booklet comprises only thirty-two pages it manages to include a great deal of information which a student of American government likes to have within arm's reach, for example, a concise biography of each of the presidents, a table of popular and electoral votes cast at all the presidential elections, etc.

Professors John Alley and Frederick F. Blachly of the University of Oklahoma have collaborated in the writing of a school textbook entitled *The Elements of Government,* which has been published by the Charles E. Merrill Company (360 pp.) The book seems to be well-planned and well written. It contains supplementary chapters on the history and government of Oklahoma.

The Princeton University Press has issued for Professor Edward S. Corwin a little volume entitled *The Constitution and What it means Today* (114 pp.) The book contains the text of the national Constitution with brief commentaries upon each section.

A new edition of Bartlett's *Handbook of American Government,* revised and enlarged by Henry Campbell Black is published by Messrs. Thomas Y. Crowell Company (162 pp.)

Messrs. Henry Holt and Company are the publishers of *The New Frontier* by Guy Emerson (314 pp.), a vigorously-written book which contains many suggestive pages. A few chapter headings will serve to indicate what the volume is about. Here they are: "What is a Liberal?" "The Need for Fifty Million Capitalists," "An American Federation of Brains," and "The American Spirit in World Affairs."

Several essays by the well-honored American jurist, Melville M. Bigelow, have been published under the title *Papers on the Legal History of Government* by Messrs. Little, Brown & Co. (256 pp.) Among the most significant of the essays are those on "Mediaeval English Sovereignty" and "The Old Jury."

Mr. John Graham Brooks continues his useful contributions to the study of social relations in his new book, *Labor's Challenge to the Social Order*, which has recently been brought out by the Macmillan Company (441 pp.) The volume is fully up to the author's standard of writing, which means that it is accurate, good-tempered and interesting.

The Macmillan Company has recently brought out a volume on *The Human Factor in Industry*, written by Lee K. Frankel and Alexander Fleisher of the Metropolitan Insurance Company (366 pp.) Various chapters deal in a practical and illuminating way with such topics as the education of the workman, the relations of the employer to the community, and the organization of a labor department.

Sovietism, by William English Walling, undertakes to give the "A, B, C" of Russian Bolshevism according to the Bolshevists (E. P. Dutton & Co. 220 pp.) The book explains the principles of Sovietism so that the general reader can easily decide what they mean without any undue intellectual effort. It includes a reprint of the Soviet constitution and decrees together with extracts from the writings of Gorky and others.

A series of lectures delivered last year at Wesleyan University by Professor Andrew Cunningham McLaughlin has been issued in book form by the Abingdon Press under the title *Steps in the Development of American Democracy* (210 pp.) There are interesting discussions of Jeffersonian Democracy, Jacksonian Democracy, and of the other stages through which American democracy has passed.

As aids in the teaching of American citizenship, the University of Arkansas has published *A Syllabus on Studies in Citizenship*, by David Y. Thomas (43 pp.); and the University of Minnesota has issued a manual on *Problems of Citizenship* (32 pp.), presenting a classified and annotated reading list. The National Catholic War Council has published, in its series of reconstruction pamphlets, one on *A Program for Citizenship*, one on *The Fundamentals of Citizenship*, and one on *A Plan for Civic Education through Motion Pictures*.

Among recent publications in the *Studies in History, Economics and Public Law*, edited by the Faculty of Political Science at Columbia University are the following: William Parker, *The Paris Bourse and French Finance;* Iwas F. Ayusawa, *International Labor Legislation;* Chong Su See, *The Foreign Trade of China;* Philip Klein, *Prison Methods in New York State;* and William E. Weld, *India's Demand for Transportation.*

RECENT PUBLICATIONS OF POLITICAL INTEREST

BOOKS AND PERIODICALS

CLARENCE A. BERDAHL

AMERICAN GOVERNMENT AND PUBLIC LAW

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